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NATURE OF THE CASE

The Petitioner, Raymond D. Cartwright ("Mr. Cartwright"), filed a Virginia Freedom of Information Act ("FOIA" or "Act") request, pursuant to Virginia Code §2.2-3700 et. seq., seeking a public record in the possession of the Commonwealth Transportation

Commissioner of Virginia ("VDOT"), the Respondent. VDOT refused to give Mr. Cartwright access to the public record. On January 30, 2004, Mr. Cartwright filed a Petition for Writ of Mandamus as provided in Virginia Code §2.2-3713. Mr. Cartwright asked the Circuit Court for the City of Chesapeake to order VDOT to provide the public record in accordance with the provisions of FOIA. On March 2, 2004, VDOT filed a Demurrer to Mr. Cartwright's petition. On July 9, 2004, after two hearings and oral argument from both parties, the circuit court entered an Order denying Mr. Cartwright's Petition for Mandamus. Mr. Cartwright timely filed a notice of appeal to this Court on July 23, 2004. Mr. Cartwright now files this Petition for Appeal pursuant to Rule 5: 17 of this Court and asks this Court to grant his Petition for Appeal.

STATEMENT OF FACTS

Mr. Cartwright is a citizen of the Commonwealth of Virginia and a resident of Chesapeake, Virginia. On January 19, 2004, Mr. Cartwright exercised his rights as a Virginia citizen by filing a FOIA request seeking to obtain a sales brochure in the possession of VDOT. The sales brochure is a public document as defined by FOIA. The brochure consists of a collection of unaltered, raw market data and public documents containing information about various properties around the City of Chesapeake. (Tr. March 3, 2004 at 13-14, 46-47). VDOT never contested any of these facts.

VDOT refused to provide the sales brochure for inspection and copying. In response to VDOT's refusal to provide the FOIA document, Mr. Cartwright filed a Petition for Writ of Mandamus in accordance with Virginia Code §2.2-3713. VDOT filed a Demurrer to the Petition. VDOT claimed that Mr. Cartwright could not obtain the mandamus relief specifically provided in FOIA until Mr. Cartwright first expended the additional cost and effort of trying to obtain the sales brochure through discovery in separate pending litigation. (Tr. March 3, 2004 at 18-19).

Mr. Cartwright is a farmer who jointly owns several parcels of land with various other owners and family members. VDOT took portions of six of these parcels through eminent domain for a highway, and the condemnation litigation is pending. (Id. at 19). VDOT asserted that Virginia law did not permit Mr. Cartwright to obtain the sales brochure as a citizen of Virginia under FOIA until he first attempted to obtain the document through the discovery process in the pending litigation relating to VDOT's condemnation of his property. (Tr. March 2, 1004 at 18-19).

On March 3, 2004 and March 17, 2004, the Circuit Court for the City of Chesapeake heard oral argument regarding VDOT's Demurrer and Mr. Cartwright's Petition for Writ of Mandamus.^[fn1] On July 9, 2004, the circuit court entered an Order denying Mr. Cartwright's Petition. The circuit court held that Virginia law required Mr. Cartwright to attempt to obtain the sales brochure through the discovery process in separate pending litigation and that until he exhausted the discovery procedures, he had no right to mandamus under Virginia Code §2.2-3713. (Order July 9, 2004). For this reason, the circuit court denied Mr. Cartwright's Petition for Mandamus under FOIA.

ASSIGNMENTS OF ERROR

1. The trial court erred in holding that Mr. Cartwright must first prove lack of an adequate legal remedy before he can enforce his statutory mandamus remedy under FOIA because Virginia law does not require a person to prove lack of an adequate legal remedy when a statute expressly empowers a court to grant mandamus relief to enforce a statutory right and no legal remedy adequately equals the statutory remedy of mandamus.
2. The trial court erred in denying Mr. Cartwright his rights and privileges as a citizen of Virginia under FOIA solely on the basis that he is an individual whose property VDOT is taking in a condemnation proceeding during which he might be able to obtain documents in discovery.

QUESTIONS PRESENTED

1. Did the trial court err in denying Mr. Cartwright, a citizen of Virginia, his remedy of mandamus expressly provided Virginia citizens under FOIA and requiring Mr. Cartwright to seek the public document through discovery as a litigant in separate litigation when Virginia Code §2.2-3713 specifically empowers the court to grant mandamus relief? (Assignment of Error #1).
2. When VDOT takes a Virginia citizen's property and files a Petition for Condemnation against the individual, does that citizen lose the rights that the Virginia Freedom of Information Act vests in Virginia citizens? (Assignment of Error #2).

ARGUMENT

I. A Citizen Seeking Mandamus Relief Expressly Provided by FOIA Is Not Required to Prove Lack of an Adequate Legal Remedy

The trial court erred in forcing Mr. Cartwright to seek other remedies because FOIA expressly empowers courts to grant mandamus relief to citizens upon a showing of a single violation of the Act. See Va. Code §2.2-3713. The General Assembly enacted FOIA to "ensure[] the people of the Commonwealth ready access to public records in the custody of public bodies." Va. Code §2.2-3700(B). The Act demands that "all public records shall be open to inspection and copying by any citizens of the Commonwealth. . . ." Va. Code §2.2-3704(A). The Act gives Virginia citizens a "straightforward device for I the release to citizens of information created with tax dollars." Associated Tax Serv. v. Fitzpatrick, 236 Va. 181, 187,372 S.E.2d 625,629 (1988).

This Court stated that the Act "calls for 'ready access,' not limited access." *Id.* The Act expressly directs courts to liberally construe the provisions of the Act which require disclosure and to narrowly construe the enumerated exemptions to the Act[fn2] *Id.*; Va. Code §2.2-3700(B). A public body refusing to relinquish public records pursuant to a citizen's request under the Act "bear[s] the burden of proof to establish an exemption by a preponderance of the evidence." Va. Code §2.2-3713(E).

Aside from granting citizens important statutory rights in FOIA, the General Assembly expressly provided the manner for exercising and enforcing those rights. Va. Code §§2.2-3704(A)-(B), 2.2-3713. A citizen must file a simple request for public records as provided in the Act. See Va. Code §2.2-3704(A)-(B). The public body must then provide the public records unless that body can meet its burden of proving that the requested records fall within one of the enumerated and narrowly construed exemptions. Associated Tax, 236 Va. at 187,372 S.E.2d at 629; Va. Code §§2.2-3700(B), 2.2 3713(E).

Any citizen denied access to public records under the Act "may proceed to enforce [his] rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause." Va. Code §2.2-3713(A). The General Assembly further provided that even "[a] single instance of denial of the rights and privileges conferred by [the Act] shall be sufficient to invoke the remedies [which include a petition for mandamus] granted [in the Act]." Va. Code §2.2-3713(D); Marsh v. Richmond Newspapers, Inc., 223 Va. 245, 257-58, 288 S.E.2d 415, 422 (1982); see also Lawrence v. Jenkins, 258 Va. 598,603,521 S.E.2d 523,525 (1999) (stating that "a writ of mandamus [is] appropriate. . . if [a citizen] was denied clearly established rights and privileges under FOIA"). Thus, courts are empowered to grant mandamus or injunctive relief under FOIA upon a showing of a single violation of the Act.

Unlike a party seeking general injunctive or mandamus relief under common law principles, a person seeking specific injunctive or mandamus relief expressly provided by statute need not prove lack of an adequate legal remedy or irreparable harm. See. WTAR Radio-TV Corp. v. City Council of the City of Virginia Beach, 216 Va. 892, 894,223 S.E.2d 895, 897 (1976).

When a statute empowers a court to grant injunctive relief, [such as FOIA does], the party seeking an injunction is not required to establish the traditional prerequisites, i.e., irreparable harm and lack of an adequate legal remedy at law, before the injunction can issue. All that is required is proof that the statute or regulation has been violated.

Virginia Beach S.P.C.A., Inc. v. South Hampton Roads Veterinary Ass'n, 229 Va. 349, 354,329 S.E.2d 10, 13 (1985); see also Carbaugh v. Solem, 225 Va. 310, 314-15, 302 S.E.2d 33,35 (1983) ("When the General Assembly determines that certain conduct is inimical to the public interest, a petition for an injunction 'need not contain an allegation of irreparable injury.'") (quoting WTAR, 216 Va. at 894, 223 S.E.2d 897). This Court reaffirmed this rule in Ticonderoga Farms, Inc. v. City of Loudon, 242 Va. 170, 176,409 S.E.2d 446, 449-50 (1991).

The circuit court erred in requiring Mr. Cartwright to prove lack of an adequate legal remedy before he could obtain the mandamus relief provided by FOIA.

Although proof of irreparable harm and proof of the lack of an adequate remedy at law are prerequisites to a grant of injunctive relief under a court's traditional

equity jurisdiction, neither showing is required when a statute or ordinance expressly empowers a court to grant injunctive relief against its violation. In that case, all that is required is proof that the statute or regulation has been violated.

Ticonderoga, 242 Va. at 176,409 S.E.2d at 449.

This principle of law applies with equal force to citizens seeking relief under FOIA, which is a statute that "empowers a court to grant injunctive [and mandamus] relief." See WTAR, 216 Va. at 894, 223 S.E.2d at 897 (explaining that a citizen seeking injunctive relief under FOIA need not show irreparable harm). FOIA expressly empowers a court to issue mandamus relief. Va. Code §2.2-3713. "A writ of mandamus is one of the remedies available under Code §2.1-346 [now Virginia Code §2.2-3713] when a person is denied rights and privileges conferred under the provisions of FOIA." Lawrence, 258 Va. at 602, 521 S.E.2d at 525.

Moreover, this court has declared that a citizen of Virginia seeking to enforce his rights under FOIA through an injunction may obtain such relief upon showing a single violation of the Act without the added burden of proving lack of an adequate legal remedy. Marsh, 223 Va. at 257-58,288 S.E.2d at 422; see also WTAR, 216 Va. at 894, 223 S.E.2d at 897. This rule logically applies equally to mandamus relief under FOIA as mandamus constitutes a mandatory injunction under the statutory scheme of FOIA. Mandamus under the Act is essentially a mandatory injunction ordering a party to produce a public record. See, e.g., Miguel v. McCarl, 291 U.S. 442,452, 54 S. Ct. 465, 467 (1934); see also Safrit v. Costlow, 270 N.C. 680,684-85, 155 S.E.2d 252,255 (1967).

In this case, Mr. Cartwright asked the court to grant the mandamus relief specifically provided in FOIA. Instead of allowing Mr. Cartwright to obtain mandamus relief upon a showing that VDOT violated FOIA, the circuit court held that Mr. Cartwright could not obtain mandamus relief under FOIA until he first proved that he lacked an adequate remedy at law. (Order July 9,2004). The circuit court erred because Virginia law does not require a citizen seeking mandamus relief under FOIA to prove lack of an adequate legal remedy before he can obtain the mandamus relief expressly provided by FOIA. Ticonderoga, 242 Va. at 176, 409 S.E.2d at 449; WTAR, 216 Va. at 894, 223 S.E.2d at 897.

In an attempt to keep the sales brochure from the citizens of Virginia, VDOT wrongly relies on Gannon v. State Corporation Commission, 243 Va. 480, 416 S.E.2d 446 (1992). A careful reading of Gannon reveals that it was not a FOIA case, that this Court did not decide Gannon under FOIA or the specific mandamus remedy provided in the Act, and that this Court did not rely upon or even cite a single case involving FOIA in deciding Gannon. In fact, this Court refused to decide whether FOIA even applied to the State Corporation Commission ("SCC"). MI. at 483,416 S.E.2d at 448 (stating that the Court did not even "consider whether the [SCC] must comply with the provisions of the Virginia Freedom of Information Act").

In Gannon, Mr. Gannon filed a FOIA request with the SCC, and the SCC claimed that FOIA did not apply to it. Id. at 481, 416 S.E.2d at 446-47. Mr. Gannon then filed a Petition for Writ of Mandamus in this Court under this Court's original jurisdiction. Id.! Before determining whether FOIA applied to the SCC, this Court required Mr. Gannon to exhaust his administrative remedies and to give the SCC an opportunity to rule whether FOIA applied to the SCC. MI. 243 Va. at 482-83, 416 S.E.2d at 447-48.

This Court never decided whether FOIA applied to the SCC, and, therefore, this ' Court did not decide the case under FOIA. MI. 243 at 483, 416 S.E.2d at 448. Without FOIA to consider, this Court decided Gannon under general common law principles that do not apply in cases where a party is seeking mandamus relief under a statute that expressly empowers a court to grant such relief. Virginia Beach S.P.C.A., 229 Va. at 354, 329 S.E.2d at 13. Reliance on Gannon is misplaced. The circuit court erred by requiring Mr. Cartwright to prove lack of an adequate legal remedy before he could obtain the mandamus relief expressly provided in FOIA when the Act empowers the court to grant injunctive and mandamus relief for a citizen such as Mr. Cartwright.

Even if Virginia law did require Mr. Cartwright to prove lack of an adequate legal remedy before he could obtain the mandamus relief provided under FOIA, the potential remedy in discovery in separate litigation is not an adequate legal remedy that precludes Mr. Cartwright from obtaining mandamus relief under FOIA because the potential remedy in discovery is not equally as convenient, beneficial, and effective as the remedy of mandamus under FOIA. It has long been the rule in Virginia that to constitute an adequate legal remedy that precludes the remedy of mandamus, the substitute remedy "must be equally as convenient, beneficial, and effective as the proceeding by mandamus." Carolina, C. & O. Ry. v. Bd. of Supervisors, 109 Va. 34, 63 S.E. 412, 413 (1909); see also Early Used Cars, Inc. v. J. Thomas Province, Comm'r in Chancery, 218 Va. 605, 610, 239 S.E.2d 98, 102 (1977).

To supersede the remedy by mandamus the party must not only have a specific remedy, but one competent to afford relief upon the very subject matter of his application, and one which is equally convenient, beneficial, and effective as the proceeding by mandamus.

Richmond Ry. & Elec. Co. v. Brown, 97 Va. 26, 33, 32 S.E. 775, 777 (1899) (emphasis added).

The circuit court denied Mr. Cartwright access to the sales brochure. The circuit court held that Mr. Cartwright's opportunity to seek the sales brochure through discovery in a separate legal proceeding was an adequate legal remedy that precluded Mr. Cartwright from availing himself of the mandamus remedy expressly provided in FOIA. (Order July 9, 2004). However, any potential remedy through discovery is not "equally convenient, beneficial, and effective as the proceeding by mandamus [under FOIA]." Carolina, 109 Va. at 34, 63 S.E. at 413; see also Early, 218 Va. at 610, 239 S.E.2d at 102. Therefore, the potential remedy through discovery does not constitute an adequate legal remedy that bars Mr. Cartwright from obtaining the mandamus remedy expressly provided in FOIA.

The trial court thus erred by ruling that Mr. Cartwright is barred from obtaining mandamus relief until he first incurs the additional time, expense, effort, and burden of pursuing the more burdensome potential remedy in discovery.

Mr. Cartwright does not have the same ability to obtain the sales brochure through discovery as he does under FOIA. Public records are more accessible and easier to obtain under FOIA than under general discovery, which has more stringent standards and less convenient timelines, and the process for obtaining documents under FOIA is much more expedient and effective than the process in discovery. There are several differences between Mr. Cartwright's mandamus remedy provided under FOIA and the potential remedy in discovery.[fn3]

First, a litigant seeking a document through discovery may obtain the document only if the document "is relevant to the subject matter involved in the pending action." Va. Sup. Ct. R. 4:1 (b)(1). Rule 4:1(b)(5) of the Rules of the Virginia Supreme Court, titled "Limitations on Discovery in Certain Proceedings," states that "discovery shall extend only to matters which are relevant [to the issues in the legal proceeding]." (emphasis added). Rule 4:1(b)(5)(2) states that Rule 4:1(b)(5) applies to "eminent domain" proceedings.

However, no "relevancy" requirement exists under FOIA; the only requirement is that the document sought must be a public record.[fn4] See Va. Code §§2.2-3700(B), 2.2-3704(A). FOIA allows a citizen seeking a document to obtain the document if the document is a "public record," regardless of its relevance to any other issues. If a citizen seeks a public document that does not fall within one of the narrowly construed exemptions, a Virginia citizen may obtain the document. Associated Tax, 236 Va. at 187, 372 S.E.2d at 629.

Second, the work product exception in discovery is much broader and more burdensome for the person seeking information than is the work product exemption under FOIA. In discovery, work product is defined as any document that is "prepared in anticipation of litigation." Va. Sup. Ct. R. 4:1(b)(3) (emphasis added). A litigant seeking access to information that is work product must demonstrate that he has a "substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means." Va. Sup. Ct. R. 4:1(b)(3). The litigant seeking the document bears the burden of demonstrating "substantial need" and "undue hardship" that entitle the litigant to the document.

In contrast, a citizen seeking a public document under FOIA may obtain a document unless the document is "work product compiled specifically for use in litigation." Va. Code §2.2-3705(A)(8) (emphasis added). Importantly, the work product exemption under FOIA is expressly limited to documents "compiled specifically for use in litigation" as opposed to any documents "prepared in anticipation of litigation." Va. Code §2.2-3705(A)(8) (emphasis added). To fall within the work product exemption under FOIA, a document must not only constitute "work product," but it must be "work product compiled specifically for use in litigation." *Id.* (emphasis added). Moreover, the public

body asserting the work product exemption under FOIA bears the burden to prove that the public document falls within the exemption, and FOIA requires courts to narrowly construe the exemptions against public bodies. Associated Tax, 236 Va. at 187, 372 S.E.2d at 629; Va. Code §.§2.2-3700(B), 2.2-3713(£).

Third, any potential remedy Mr. Cartwright may have through discovery is not I "equally convenient" as his mandamus remedy that is provided under FOIA. If Mr. Cartwright seeks a document in discovery, he must begin by filing a Request for Production pursuant to Rule 4:9 of the Rules of the Supreme Court of Virginia. VDOT has twenty-one (21) days to respond to this request. Va. Sup. Ct. R. 4:9(b). Then, if VDOT objects to the request, Mr. Cartwright must file a Motion to Compel and set the motion for a hearing. At a minimum, this process takes weeks, not to mention the expense involved, which is discussed below.

If Mr. Cartwright seeks a document under FOIA, he files a simple FOIA request pursuant to the Act. Va. Code §2.2-3704(A)-(B). VDOT must respond to the request in just five (5) working days.[fn5] Va. Code §2.2-3704(B). If VDOT refuses to produce the document, FOIA expressly authorizes Mr. Cartwright to file a Petition for Mandamus. Va. Code §2.2-3713(A). More importantly, the Act requires the court to hold a hearing on the mandamus within seven (7) days. Va. Code §2.2-3713(C). This process is much more expedient, convenient, and beneficial than the process of seeking a document in discovery.

Fourth, a FOIA request is much less expensive than having to pay an attorney for time spent trying to obtain a document in discovery in the litigation process. A citizen seeking documents in discovery must pay the attorney for his or her time, which can include drafting the request for production, drafting a motion to compel, preparing for oral argument, spending time in court arguing the motion to compel, and drafting the order requiring the opponent to produce the document. Citizens seeking documents in discovery may represent themselves pro se, which includes drafting various legal documents, such as requests for production and motions to compel, making legal arguments at a hearing to obtain the document, and responding to a multitude of unfamiliar legal objections. Otherwise, they must pay an attorney to seek the documents through discovery.

On the other hand, a citizen seeking a document under FOIA can file a FOIA request for free without any filing fee and without the expense of an attorney.[fn6] The General Assembly made FOIA simple and cost-free so that it would be usable by and available to all citizens. FOIA allows a citizen to obtain public documents without the costs of hiring an attorney and without the need for litigation.

In addition to the previously discussed differences between discovery and FOIA, it must be noted that a public body has a broad array of objections it may raise against a party seeking a document through a request for production of documents in discovery. These objections are impediments to the party seeking the document, and the public body is not limited to any specific, enumerated list of objections.

To the contrary, a public body served with a request under FOIA may raise only those limited and enumerated objections that are specified in the Act. Va. Code §2.2 3700(B). Even the circuit court noted that a citizen may not "really have an adequate remedy [in discovery] if there's going to be an objection [to the person's discovery request]." (Tr. March 3, 2004 at 50). Such a situation, the trial court acknowledged, places the person "between a rock and a hard place." (Id. at 50). Discovery is not "equally convenient, beneficial and effective" as a request under FOIA, as litigants face additional and often unpredictable impediments and obstacles in discovery. The simplicity of filing a FOIA request demonstrates that FOIA was intended to empower citizens, not just attorneys. The Act was designed to allow all Virginia citizens, including lay persons, to file a proper request whereby he or she could obtain access to public records. Unlike engaging in the more cumbersome legal procedures of discovery, a citizen filing a FOIA request should not have to hire an attorney or become mired in litigation.

II. The Circuit Court's Interpretation and Application of FOIA Denies Citizens Whose Property Is Taken Through Eminent Domain Equal Rights Under FOIA and Produces Unjust Results

The circuit court's application of FOIA produces unjust results that deny Mr. Cartwright equal treatment under the law. FOIA permits all Virginia citizens to have equal access to public records, and it allows all citizens to enforce their rights through mandamus or injunctive relief upon a showing of a single violation of the Act. The Act bases a person's rights under FOIA on his status as a citizen of Virginia. All citizens have equal rights under the Act.

Under the circuit court's application of FOIA, citizens forfeit their rights under FOIA the moment a condemning authority files suit to take the person's property through the power of eminent domain. For example, on the day before VDOT filed suit to take Mr. Cartwright's property, he could freely avail himself of his mandamus remedy under FOIA—just like all other Virginia citizens. However, on the day after VDOT filed suit to take Mr. Cartwright's property, he could not freely avail himself of his rights, including his mandamus remedy, under FOIA. Meanwhile, Mr. Cartwright's neighbor and even his attorney, as citizens of Virginia, could obtain the same sales brochure through mandamus under FOIA that the circuit court ruled Mr. Cartwright cannot obtain.

The circuit court's application of FOIA imposes additional hurdles and impediments on Mr. Cartwright that are not faced by other citizens exercising their rights under FOIA. Under the circuit court's rationale, Mr. Cartwright cannot obtain the sales brochure under FOIA without first incurring the additional time, expense, effort, and burden of discovery. Meanwhile, any other citizen of Virginia may freely obtain the sales brochure through mandamus as provided under FOIA without suffering these additional burdens and impediments.

The result reached by the circuit court in this case is even more inappropriate when viewed in light of the nature of an eminent domain proceeding. VDOT took Mr.

Cartwright's property and made him an involuntary party to eminent domain litigation. Unlike a typical defendant, Mr. Cartwright is not mired in the litigation due to any fault, or even alleged misconduct, of his own. He is involved in the litigation solely because VDOT chose to take his property.

Forcing Mr. Cartwright to face the additional burdens of discovery before he can exercise his rights under FOIA denies Mr. Cartwright equal rights and protections under FOIA. All Virginia citizens may enforce their rights under FOIA through mandamus as provided by the Act. However, Mr. Cartwright cannot enforce his rights under FOIA until he has suffered the additional time, expense, effort, and burden of discovery in separate and unrelated litigation.

This unjust and onerous result stems from the circuit court's failure to apply the plain language of the Act, which defines a person's rights under FOIA based on the person's status as a citizen of Virginia. See Associated Tax, 236 Va. at 187,372 S.E.2d at 629; Va. Code §§2.2-3700(B), 2.2-3713(E) (recognizing that a person's rights under FOIA are determined by the person's status as a citizen of Virginia); see also Va. Legal Ethics Op. No. 1504 (December 14, 1992) ("the status of[a] litigant or litigant's counsel does not disenfranchise one from obtaining information otherwise available to the public"). Instead of basing Mr. Cartwright's rights under FOIA on his status as a citizen, the circuit court based Mr. Cartwright's rights under FOIA on his status as a litigant. While federal courts' interpretation of federal FOIA is not binding, the Fourth and Sixth Circuits have provided guidance in this area. See, e.g., Nix v. United States, 572 F.2d 998, 1002-03 (4th Cir. 1978) (explaining that a person's ability to obtain a document under the federal version of FOIA should not be enhanced or diminished because of the person's ability to obtain the document in separate litigation and stating that the person should be treated the same as every other citizen seeking documents under FOIA); see also Hawkes v. Internal Revenue Serv., 467 F.2d 787, 793 (6th Cir. 1972) (explaining that a person's ability to obtain documents under FOIA should not be diminished due to the "status of the seeker" as a litigant in separate litigation). The Sixth Circuit explained that determining a person's rights based on the status of the seeker would allow the person's attorney to obtain a document under FOIA while denying the person from obtaining the same document under FOIA. Hawkes. 467 F.2d at 793.

The circuit court's application of FOIA deprives citizens whose property is taken through the power of eminent domain equal access to public records under FOIA and produces results that are contrary to the language of the Act.

CONCLUSION

The trial court erred in requiring Mr. Cartwright to use discovery in separate litigation to obtain public documents when FOIA specifically empowers courts to grant Virginia citizens mandamus relief upon a showing of a single violation of the Act. Virginia law does not require a person to prove irreparable harm and lack of an adequate legal remedy when a statute expressly empowers the court to grant mandamus relief. Moreover, even if the law did require Mr. Cartwright to prove lack of an adequate legal remedy, any

potential remedy through discovery is not equally as convenient, beneficial, and effective as the proceeding by mandamus provided under FOIA, and therefore cannot constitute an adequate legal remedy that precludes the grant of mandamus relief. For the foregoing reasons, Mr. Cartwright respectfully requests that this Court grant his Petition for Appeal.

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FOOTNOTES:

1. The March 17, 2004 hearing was a telephone hearing at which the court pronounced its ruling. No court reporter was present at this hearing.

2. "The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed." Va. Code §2.2-3700(B).

3. While no Virginia cases address this specific point, Wilder v. Superior Court, 66 Cal. App. 4th 77, 81-84, 77 Cal. Rptr. 2d 629,632-34 (1998) provides a detailed analysis of this issue.

4. The Act defines public records as "all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business." Va. Code §2.2-3701.

5. If it is "not practically possible to provide the requested records. . . within the five-work-day period," a public body may request an additional seven workdays to provide the documents. Va. Code §2.2-3704(B)(4).

6. "A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records." Va. Code §2.2-3704(F).