

TWENTY-THIRD JUDICIAL CIRCUIT  
OF VIRGINIA

CHARLES N. DORSEY, CHIEF JUDGE  
ROANOKE CITY COURTHOUSE  
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COMMONWEALTH OF VIRGINIA

CIRCUIT COURT FOR THE COUNTY OF ROANOKE  
CIRCUIT COURT FOR THE CITY OF ROANOKE  
CIRCUIT COURT FOR THE CITY OF SALEM

July 29, 2009

D. Stan Barnhill, Esquire  
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Huffman & Nixon, PC  
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Roanoke, VA 24016-4002

In re: Media General Operations, Inc. v. Octavia Johnson  
In the Circuit Court for the City of Roanoke  
Case Number: CL08002016-00

Dear Counsel,

Thank you for your argument and authority submitted in this case.

This matter originated on a petition for mandamus and injunction. The petition prays for a writ of mandamus compelling the Sheriff for the City of Roanoke to produce copies of certain "arrestee photographs;" for an injunction mandating that the Sheriff comply with all such future Freedom of Information Act ("FOIA") requests, except when such disclosure will compromise an ongoing investigation; and for an award of attorney's fees and costs.

The petition is filed under the authority of Virginia Code §2.2-3713. In pertinent part, the subsection of FOIA at issue is Virginia Code §2.2-3706 (F)(2). That subsection requires disclosure of "arrestee photographs" in response to a FOIA request unless withholding the photographs is necessary to avoid jeopardizing an investigation in felony cases. Counsel for both parties note that the matter has not been mooted by photographs having been provided. Nonetheless, the Sheriff affirmatively alleges that she rejects former advice she had received on this issue and releases "all arrestee photographs unless they would jeopardize an investigation in a felony case in compliance with 2.2-3706

(F)(2)." The Sheriff goes on to note that she "intends to follow this position in relation to all future FOIA requests for arrestee photographs."

In light of the Sheriff's written position as well as that argued by her counsel at the time of hearing in this matter, and based on the position of both counsel that the matter has not been mooted, the writ of mandamus shall issue compelling the Sheriff to produce copies of the requested "arrestee photographs."

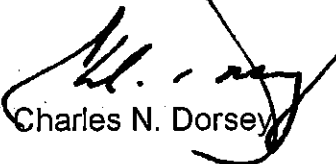
Further, an injunction mandating that the Sheriff shall comply with all such future requests for "arrestee photographs", except when such disclosure will compromise an ongoing investigation, shall likewise issue.

The only issue remaining is provision of an award for attorney's fees. Virginia Code §2.2-3713 (D) mandates that "the petitioner shall be entitled to recover reasonable costs and attorney's fees. . . if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust." In determining whether an award would be unjust, the same statutory subsection notes that a court may consider, "among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position." Neither an opinion of the Attorney General or a decision of a court that supports the Sheriff's decision has been argued in this case. The Court is unaware of any other special circumstances that would make an award of attorney's fees unjust. The Sheriff argues that the affidavit of attorney's fees submitted by counsel for the plaintiffs is unreasonable but in reviewing the affidavit and exhibits attached to the affidavit, along with the argument at the time of hearing in this matter, the Court finds that the claimed attorney's fee of three thousand, one hundred, twenty-seven dollars and no/100 cents (\$3,127.00) are reasonable and appropriate under the statute.

If Mr. Barnhill would submit an order in accord with this opinion after obtaining endorsement and objections from Mr. Nixon, it would be appreciated.

With best regards, I am

Very truly yours,

  
Charles N. Dorsey

CND/skb