



COMMONWEALTH of VIRGINIA

STEPHANIE M. REVERE
JUDGE

General District Court
COUNTY OF GLOUCESTER
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HANNAH R. SMITH
CLERK

May 24, 2023

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Re: Dooley v. Gloucester County School Board,
Case No. GV23000477-00

Dear Mr. Anderson and Ms. Haney,

Before the Court is a Petition for Writ of Mandamus, which was filed by Kaitlyn Dooley (hereinafter "Petitioner") pursuant to Virginia Code §2.2-3700 *et seq.* The Petitioner claims the Gloucester County School Board (hereinafter "Respondent") violated the provisions of the Virginia Freedom of Information Act (FOIA) when it refused to provide an audio recording of a December 14, 2021, school board meeting, citing the closed meeting exception. *See* Code of Virginia of 1950, as amended, § 2.2-3705(5).

The Court heard evidence on April 19, 2023, and continued the matter on motion of the parties to allow legal briefing on the issue of whether Virginia law allows a school board to hold a closed meeting to discuss the performance of an elected school board member where no standing rule of the board permits a member to be censured or otherwise disciplined by the board.

On May 17, 2023, the Court overruled Respondent's demurrer and announced its ruling in favor of Petitioner from the bench. Because the Court decided the case for reasons that differ from the issues briefed by counsel, this letter opinion is issued for the purpose of memorializing the rationale for this decision.

Virginia Code § 2.2-3711(A)(1) allows a public body to hold a closed meeting to discuss or consider the “assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation” of three categories of people:

1. specific public officers;
2. appointees;
3. or employees of any public body.

Closed meetings are only permitted if the public body passes an affirmative, public vote to hold a closed meeting. The motion to close a public meeting must specifically identify the subject matter of the closed meeting, state the purpose of the meeting, and cite the applicable exemption from open meeting requirements. *See* Va. Code Ann. § 2.2-3712(A). Furthermore, pursuant to Virginia Code §2.2-3712(C), all closed meeting discussions shall be limited to those matters identified in the motion for a closed meeting.

Assuming, without deciding, that a school board may hold a closed meeting to discuss the performance or discipline of an elected school board member based on an inherent authority to censure its membership, no such motion was made prior to the closed meeting on December 14, 2021. The minutes of the December 14, 2021, school board meeting indicate the school board unanimously approved a closed meeting for the stated purpose of: “discussion of personnel matters (monthly appointments, resignations, evaluations of performance).” *See* Respondent’s Exhibit 1. Furthermore, the secretary’s notes of this motion and the subsequent voice vote indicate the motion was made for the purpose of “discussion of personnel matters” as well as the “evaluation of personnel.” *See* Petitioner’s Exhibit 4.

The word “personnel” is not expressly used in the applicable statute. “Personnel” is defined as “a body of persons employed in an organization or place of work.” *See* <https://www.dictionary.com>, viewed May 23, 2023. The statute makes a clear distinction between “employees” and “specific public officers.” *See* Va. Code Ann. § 2.2-3711. Using the term “personnel matters” as a catchall phrase to describe employees, public officers, and appointees, would obfuscate the statutory requirement of specificity. A lawful motion to close a public meeting to discuss the performance or discipline of a public officer must state the subject matter of the closed meeting unequivocally.

Given the verbiage used in the motion to close the meeting and the plain language definition of the word “personnel,” the Court concludes that the meeting was properly closed for the limited purpose of a discussion of performance matters relating to *employees*. An elected school board member is not an employee. An elected school board member is a public officer.¹ Thus, the Court need not decide whether a school board, without the specific authority to discipline a member in its rules, may lawfully close a meeting pursuant to Virginia Code §2.2-2711(A). Pursuant to Virginia Code §

¹ The parties appear to concede this point. *See* Petitioner’s Brief at p. 4 and Respondent’s Brief at p. 4.

2.2-3712(C), the December 14 closed meeting discussion had to be restricted to the performance, demotion, salary disciplining or resignation of employees.

The portion of the closed meeting in which the Board discussed two elected school board members improperly violated Virginia Code § 2.2-3713 and is not exempt from FOIA. The Court, therefore, concludes the School Board improperly withheld these portions of the audio recording of the public record from the Petitioner.

The writ of mandamus is granted, and the Respondent is ordered to produce to the Petitioner the portions of this recording that capture a discussion about the performance of specific school board members. The audio recording entered as evidence in this matter is not redacted to exclude those matters properly discussed in a closed meeting. Consequently, the recording in evidence in this matter will remain under seal.

The Respondent is further ordered to pay the Petitioner's reasonable attorney's fees in the amount of \$4000 and court costs in the amount of \$60.00. Although the Court finds the Petitioner substantially prevailed on the merits of this controversy, the reduction in fees reflects the fact that the Petitioner possessed a copy of the withheld record, obtained directly from Mr. Post, at the commencement of this matter. The Court finds this to be an unusual circumstance warranting a reduction in the award of actual attorney's fees. *See* Va. Code Ann. §2.2-3713(D).

Finally, 2.2-3714(C) allows the Court to impose a civil penalty if the Court finds a public body voted to certify a closed meeting when closure was not in accordance with 2.2-3712(D). Because the discussion recorded in this closed meeting as it relates to Mr. Post, is so far outside the realm of what a reasonable person could possibly consider a professional discussion of a public officer or employee's performance, the Court concludes a penalty is appropriate and imposes a \$250 civil penalty. Given the fact that the true financial burden of this penalty most directly impacts the taxpayers of Gloucester County and after considering the objections of Respondent's counsel, the \$250 civil penalty is suspended.

This is the opinion of the Court.

Sincerely,



Stephanie M. Revere
Chief Judge
9th Judicial District

cc: File