

Commonwealth of Virginia

FIFTEENTH JUDICIAL CIRCUIT

JUDGES

Gordon F. Willis
J. Overton Harris
Sarah L. Deneke
Michael E. Levy
Patricia Kelly
Herbert M. Hewitt
Victoria A. B. Willis
R. Michael McKenney
Ricardo Rigual
William E. Glover
J. Bruce Strickland



J. Overton Harris
Patricia Kelly
Hanover Circuit Court
Post Office Box 505
Hanover, Virginia 23069-0505
(804) 365-6161

RETIRED JUDGES

William H. Ledbetter, Jr.
H. Harrison Braxton, Jr.
Ann Hunter Simpson
John R. Alderman
Horace A. Revercomb, III
J. Martin Bass
David H. Beck
Harry T. Taliaferro, III
Joseph J. Ellis
Charles S. Sharp

December 20, 2023

Andrew T. Bodoh
Thomas H. Roberts & Associates, P.C.
105 S 1st Street
Richmond, Virginia 23219
Counsel for Petitioner Alice C. Minium

Rebecca B. Randolph
Deputy County Attorney
7516 County Complex Road
Hanover, Virginia 23069
Counsel for Respondent Hanover County

William W. Tunner
Thompson McMullan, P.C.
100 Shockoe Slip, 3rd Floor
Richmond, Virginia 23219
Counsel for Respondent David R. Hines

Re: *Alice Minium v. David Hines & Hanover County* (CL23003560-00)

Dear Counsel:

On October 30, 2023, the Court heard argument on Petitioner's Writ of Mandamus – Count I against Hanover County and Count II against David Hines in his capacity as Sheriff of Hanover County. The Court took the matter under advisement to review the pleadings,

transcript, statutes, and case law. The Court now dismisses the Writ on both counts for the reasons provided in further detail below.

BACKGROUND

The facts are agreed to by the parties. On August 19, 2023, Petitioner, Ms. Minium (“Minium”) filed a Virginia Freedom of Information (VFOIA) request for “a roster of all sworn law enforcement employees on payroll with [Hanover’s] agency as of today’s date.” The request specifically asked for the full legal name, job title, rank, assigned unit or division, gender, race, date of first agency hire, date of current hire, fiscal year 2023 salary, fiscal year 2023 overtime and bonus pay, and fiscal year 2023 total compensation for each deputy employed by the Hanover County Sheriff’s Office. The request asked that the information be provided in a spreadsheet, or in a collection of documents to show the same.

Hanover County Human Resources (“HR”) maintains the personnel records of Hanover County Sheriff’s Department. Initially, HR’s director, Catey Dickensheets (“Dickensheets”) responded with a spreadsheet containing all the requested information except for the names of deputies below the rank of Captain. Minium filed her Writ of Mandamus on October 23, 2023, based on the failure to provide the names of all the deputies as requested. On October 27, 2023, Hanover HR provided additional names that included the original names plus the names of deputies below the rank of Captain who were in highly visible public facing positions. The new list contained approximately twenty-five names including those from the original production but failed to provide the names of all the deputies employed by Hanover County, specifically those below the rank of Captain. Dickensheets, and County Attorney Dennis Walter told Minium via email that the reason for withholding the names of the officers below the rank of Captain was due to staffing concerns for undercover operations based on VA Code §§ 2.2-3706(B)(8), (10) (2023). The County Attorney informed Minium that the Sheriff was exercising his right to withhold the information under VFOIA.

Neither party disputes whether Minium is a proper petitioner, whether David Hines (Hines) is considered a “public body,” whether Hanover County is a “public body,” what information was requested, what information was actually provided, or whether that information was a “public record.” The dispute rests on the reason for the denial of a portion of the information requested and the manner of its dissemination. Petitioner Minium takes the position

that the exceptions provided as the justification for withholding the names do not apply because VFOIA is to be construed broadly and the exceptions are to be construed narrowly. Petitioner also objects to the form of the response provided by HR claiming that the spreadsheet provided does not meet the requirements under VFOIA. Respondents each take the position that the exception in § 2.2-3706(B)(8) or (B)(10) justifies withholding the information. Finally, Respondents argue that they provided the information in the format that was requested by the Petitioner. HR further argues, independent of Hines, that they are solely the record keeper, and they provided the information that was authorized by Hines.

ANALYSIS

VFOIA exists to provide the public “ready access to public records in the custody of a public body or its officers and employees.” Va. Code Ann. § 2.2-3700(B). VFOIA should be interpreted such that, unless specifically excepted, all public records shall be open to citizens of Virginia. *See Hawkins v. Town of South Hill*, 301 Va. 416, 424 (2022). Code § 2.2-3700(B) sets out that VFOIA “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.” To that effect, exemptions are to be narrowly construed, and not exempted unless specifically provided for. Va. Code Ann. § 2.2-3700(B). *See* Va. Code Ann. § 2.2-3704.01. VFOIA also contains specific rules for disclosure of law enforcement personnel. *See* Va. Code Ann. § 2.2-3706. Finally, Code § 2.2-3706(B)(8) provides an exception to disclosure in the following circumstances:

The following records are excluded from the mandatory disclosure provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:

8. Those portions of any records containing information related to undercover operations or protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations or protective details. Nothing in this subdivision shall operate to allow the withholding of information concerning the overall costs or expenses associated with undercover operations or protective details.

A public body that denies a VFOIA request bears the burden of proving by a preponderance of evidence that an exclusion applies. Va. Code Ann. § 2.2-3713(E). The

question at issue in this case is whether § 2.2-3706(B)(8) applies and permits Hines to withhold the actual names of individuals employed by the Hanover Sheriff's Department below the rank of Captain.

QUESTIONS PRESENTED:

I. Manner of Response: HR Properly Responded to Petitioners VFOIA Request by Providing Information in a Form Specifically Requested by Petitioner.

VA Code § 2.2-3704(D) states that “no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.” Here, Minium specifically requested that the information be provided as follows, “please send the responsive records in **spreadsheet (XLSx)** format. If you must provide this data in PDF format, I request that the file please contain machine-readable text.” (emphasis in original). (Joint Ex. 1). Both the initial production that occurred on August 25, 2023, and the supplemental production that occurred on October 27, 2023, were provided to Ms. Minium in an XLSx spreadsheet format, **as requested**. (Joint Ex. 2 & 5). Petitioner’s argument that this manner of production was not “agreed between the requester and the public body,” is without merit. By providing the information in the specific form requested by the Petitioner, the public body implicitly agreed to said form.

II. Respondents Have Shown by a Preponderance of the Evidence That § 2.2-3706(B)(8) Applies and That the Names Were Permissibly Withheld Under That Statute.

At the hearing on the matter, Dickensheets testified that HR maintains the personnel records of the Hanover County Sheriff's Department, and that HR will consult with the Sheriff's Department when responding to VFOI requests regarding the Sheriff's Department.

Major Flagg of the Hanover County Sheriff's Department testified that the Sheriff's Department is the only law enforcement agency in the county, except for the town of Ashland Police Department, which has concurrent jurisdiction with Hanover but only in the town of Ashland. He clarified that Hanover County does not have a separate police department and all law enforcement duties are the responsibility of the Sheriff's Department. Major Flagg further testified that the policy of the Sheriff's Department is that any deputy below the rank of Captain

is part of the pool of deputies who may be assigned to serve in an undercover operation or protective detail at any point in time. He went on to explain that the staffing decisions for undercover operations are based on the particular operation and can/will change depending on the needs of that operation. He testified that releasing the identity of deputies below the rank of Captain would prevent the Sheriff's Department from being able to properly staff protective details or undercover operations.

VA Code § 2.2-3706(B) specifically excludes certain types of information from the mandatory disclosure rules of VFOIA and instead gives the custodian of the information the discretion to withhold the information. The exception to VFOIA in VA Code § 2.2-3706(B)(8) applies to “[t]hose *portions* of records or any records containing information related to undercover operations or protective details that would reveal the *staffing* . . .” (emphasis added).

Petitioner argues that revealing the names of officers in existence on the day the VFOIA request was made does not identify any single officer as a member of an undercover operation or protective detail. Respondent counters that releasing the information limits the ability of the Sheriff to properly plan and staff undercover operations or protective details. While the Court agrees with Petitioner's argument that most uniformed officers wear readily identifiable nametags or badges, there is a difference between an individual wearing a name tag and providing a list that contains all the names of all the deputies of the Sheriff's Department. Once a name is released as a member of the department there is nothing that prevents someone from conducting further research, finding a picture, and publishing on social media the name and photos of all officers for the department. Were that to happen, it would clearly affect the Sheriff's ability to staff undercover operations.

The Court finds that Respondents established, by a preponderance of the evidence, that withholding the names of deputies below the rank of Captain meets the criteria of § 2.2-3706(B)(8) because the public availability of those names would interfere with the ability of the Sheriff to *staff* protective details or undercover operations, now or in the future. The exception specifically allows the withholding of this information at the discretion of the custodian. Therefore, the Writ of Mandamus as to Counts I against Hanover County, who acted at the direction of Hines in responding to the request, and Count II against Hines, who has the discretion to withhold the information, are dismissed.

Counsel for Respondent Hines is directed to prepare an Order consistent with this opinion and circulate it for entry. The Order will be final for purposes of appeal and should include language indicating same.

Respectfully,

A handwritten signature in black ink, appearing to read 'Patricia Kelly', written in a cursive style.

Patricia Kelly,
Judge,
Hanover Circuit Court