

V I R G I N I A:

IN THE CIRCUIT COURT OF SMYTH COUNTY

TOWN OF SALTVILLE, VIRGINIA,
A Municipal Corporation

v.

Case No: CL11-100

BARRY S. SURBER,
SALTVILLE PUBLISHING COMPANY,
STANLEY M. "RUSTY" CAHILL,

and

TINA M. PRICE

FINAL ORDER

This matter arises out of a dispute regarding the Virginia Freedom of Information Act, Va. Code §§ 2.2-3700, et seq. The petitioner, Town of Saltville, Virginia, is a Virginia municipal corporation. As such, the Town is defined by the statute as a public body, and is therefore subject to the obligations imposed by that act. Respondents Surber and Saltville Publishing Company submitted Freedom of Information requests to the Town for certain communications to or from respondent Cahill, a former member of the Saltville Town Council. Respondent Price is an employee of the Town of Saltville and a party to some of the

8/29/2011 cc: (W30), CLF, JLC, SPC, TAP

communications at issue in this proceeding. Price objected to the Town releasing the communications in question on the grounds that they were personal and unrelated to the transaction of public business.

The Town brought the present action pursuant to the Declaratory Judgment Act, Va. Code §§ 8.01-184 et seq., asking the Court to determine the applicability of the Freedom of Information Act to the disputed documents and to determine whether the same should be disclosed or withheld, in whole or in part. The Town submitted the disputed documents to the Court as Sealed Exhibit 1 to the complaint.

All of the parties respondent were duly served with process herein. Respondents Saltville Publishing Company and Price have filed no responsive pleadings and made no appearance in this matter. Respondent Cahill filed an answer. Respondent Surber filed a demurrer to the Town's declaratory judgment complaint and also filed a petition asking the Court to issue a writ of mandamus requiring the Town to release the disputed documents and to pay Surber's attorney fees. The Town filed pleadings in response to Surber's demurrer and petition for mandamus. The Town also moved for a default judgment as to respondents Saltville Publishing Company and Price.

Pursuant to notice, the Court conducted a hearing on June 16, 2011. Counsel for the petitioner, counsel for respondent Surber and counsel for respondent Cahill were all present before the Court on the day of hearing. In addition, the petitioner was present in the persons of its mayor, town manager, clerk/treasurer and one member of its governing body. Respondent Surber was also present in person on the day of the hearing. Respondents Saltville Publishing Company and Price made no appearance at the hearing. Whereupon, the Court proceeded to receive the arguments and authorities tendered by counsel for the Town, Surber and Cahill, and the Court took the matters under advisement to consider the same.

Having reviewed the entire record herein, including the disputed documents submitted as Sealed Exhibit 1 to the complaint, and having further carefully considered the authorities submitted and the arguments made, both orally and in writing, on behalf of the parties present for the June 16, 2011 hearing, and for the reasons that are more particularly set forth in the Court's letter opinion in this matter dated July 11, 2011, the Court now makes the following rulings:

1. The Town's motion for default judgment as to respondents Saltville Publishing Company and Price is GRANTED, and those respondents shall be bound by the Court's rulings herein.

2. Respondent Surber's demurrer to the Town's declaratory judgment complaint is not well taken, and the same is hereby OVERRULED.

3. Respondent Surber's petition for a writ of mandamus is hereby DENIED.

4. Respondent Surber's claim against the Town of Saltville for the payment of Surber's attorney fees in this proceeding is hereby DENIED.

5. The Court finds that complaint exhibits G and H fall within the scope of the Freedom of Information Act and that the same were properly produced by the Town. The petitioner shall provide copies of complaint exhibits G and H to any party who may make a valid request therefor under the Virginia Freedom of Information Act. The foregoing exhibits are also publicly available in the Circuit Court Clerk's Office of Smyth County, Virginia as part of the court file in the present proceeding.

6. With respect to the documents submitted as Sealed Exhibit 1 to the complaint, the Court finds that nine (9) of the communications are, in part, records "in the transaction of public business" and, therefore, subject to disclosure under the Freedom of Information Act. The Court has redacted those portions of the nine records which are purely personal and do not constitute the transaction of public business.

7. The Town is ORDERED to provide copies of the following documents from Sealed Exhibit 1, as those documents have been redacted by the Court, to respondents Surber and Saltville Publishing Company. The Town shall provide the enumerated pages from Sealed Exhibit 1 upon receipt of a duly attested copy of the present order as entered by the Court.

- Saltville Sealed 000001
- Saltville Sealed 000020
- Saltville Sealed 000029
- Saltville Sealed 000031
- Saltville Sealed 000032
- Saltville Sealed 000033
- Saltville Sealed 000034
- Saltville Sealed 000038
- Saltville Sealed 000040
- Saltville Sealed 000044

8. The Court finds that all records in Sealed Exhibit 1, other than the unredacted portions of the pages itemized in Paragraph 7 of this order, are not records in the transaction of public business. Therefore, the same are not subject to disclosure under the Freedom of Information Act.

9. The Court ORDERS that Sealed Exhibit 1 shall remain under seal in the court file, and the same shall not be disclosed, except for the portions thereof that are specifically itemized in Paragraph 7 of this order.

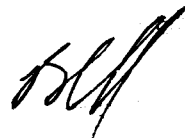
10. There remaining nothing further to be done, this action is DISMISSED WITH FULL PREJUDICE to the rights of all the parties hereto. The Clerk shall strike this matter from the active docket and place the same among the ended causes.

11. Endorsement of this order by respondents Price and Saltville Publishing Company is dispensed with pursuant to Rule 1:13.

12. The Clerk is directed to send an attested copy of this order to all counsel of record and to the unrepresented parties.

ENTER this 24th day of August, 2011.

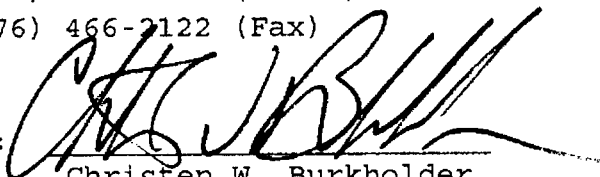

ISAAC ST. C. FREEMAN, JUDGE



SEEN AND NO OBJECTION:

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Post Office Box 505
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By:



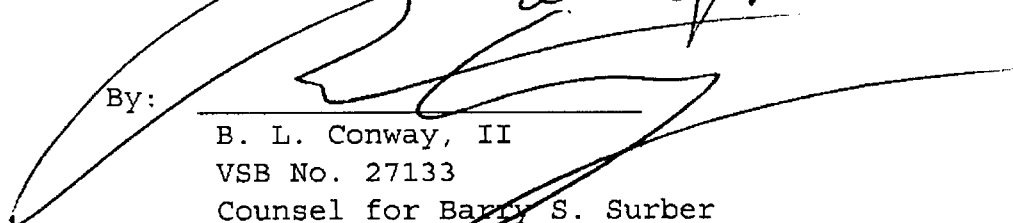
Christen W. Burkholder
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Counsel for Town of
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SEEN AND OBJECTED TO:

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*AS A Gross Miscarriage of Justice
Undermining the purpose of Virginia's Freedom of Information
Act by creating exceptions by
Judicial Fiat/Anal for the Discovery
Statute at the hearing which
are of record.*

By:

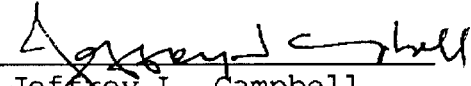


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SEEN AND NO OBJECTION:

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By:



Jeffrey L. Campbell
VSB No. 45247
Counsel for Stanley M. Cahill

ENDORSEMENTS DISPENSED WITH PURSUANT TO RULE 1:13:

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c/o Ms. Loretta N. Hodgson
Post Office Box QQ
Saltville, VA 24370

Tina M. Price
197 Lick Skillet
Saltville, VA 24370