

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
John Marshall Court Building

JOHN BUTCHER)

Plaintiff,)

v.)

Case No. CL08-553-1

SCHOOL BOARD OF THE)
CITY OF RICHMOND)

Defendant.)

ORDER

On March 24, 2008, the parties by agreement came to be heard upon Plaintiff's verified complaint, Defendant's answer and the stipulated exhibits. Following the hearing, at the request of the Court, the parties, respectively, submitted additional argument in a letter and brief. The Court has reviewed the pleadings, the evidence, the letter/briefs, and the arguments of counsel.

For the reasons stated in the Court's letter opinion dated April 3, 2008, which is incorporated herein by reference, the Court rules that the Plaintiff is entitled to the relief prayed for in his verified complaint. In so doing, the Court makes the following factual findings:

1. Defendant's response of January 24, 2008 with the personnel record exemption, coming as it did more than five working days following Plaintiff's request on January 14, 2008, amounts to a "[f]ailure to respond to a request for records ... [and] ... a denial of the request ... constitut[ing] a violation" of the Virginia Freedom of

Information Act (“FOIA”). While the documents and correspondence requested may fall within the exemption allowed in § 2.2-3705.1 and, as argued, “contracts ... settling public employee employment disputes” under § 2.2-3705.8 to which public access may be denied, the exemption was not properly invoked in a timely manner.

2. The Court rejects Defendant’s contention that its January 24, 2008 “personnel records” exemption is timely because Plaintiff did not specify a “separation agreement” until January 23, 2008. The Court finds that Plaintiff’s January 14, 2008 FOIA request sought documents “prepared, owned or in the possession” of the Defendant, and the request specifies amendments to Mr. Sheeran’s contract. While the characterization of the settlement document may be accurate, the Court finds that an agreement having to do with modification of Mr. Sheeran’s employment contract fits the description of an “amendment” as sought in the January 14, 2008 request.

3. Lastly, Defendant’s response that the drafts of the requested agreement and correspondence were not in the School Board’s possession, but in the possession of its attorney, does not defeat the fact that the documents, although in the hands of the Defendants’ attorney at the time, nonetheless are in Defendant’s constructive possession as “public records ... in the possession ... of ... agents.”

4. A single instance of denial of the rights and privileges conferred by FOIA entitles Plaintiff the relief requested. § 2.2-3713.D.

5. The parties shall schedule a hearing on Plaintiff’s request for attorney’s fees within ten (10) days of the entry of this Order.

Accordingly, the Court ORDERS:

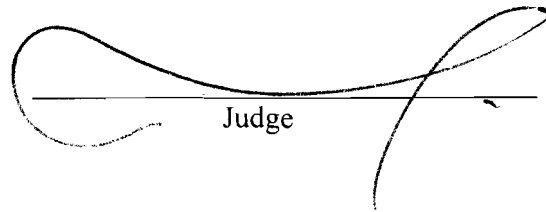
A. Defendant shall immediately produce to Plaintiff all drafts of the separation agreement with Sheeran that were in its attorney's files at the time of Plaintiff's request.

B. Defendant is permanently enjoined to comply with the Virginia Freedom of Information Act ("FOIA") in its responses to any future requests from Plaintiff for public records.

This matter is continued.

The Clerk shall certify copies of this order to Ms. Seabrook and Mr. Biss.

ENTER this 23 day of April, 2008.



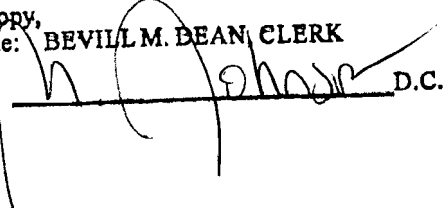
Judge

I ASK FOR THIS:

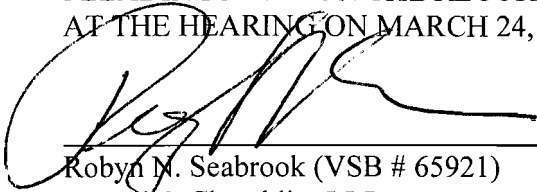


Steven S. Biss (VSB # 32972)
P.O. Box 592
Richmond, Virginia 23219
Telephone: (804) 861-8733
Mobile: (804) 501-8272
Facsimile: (202) 318-4098
Email: stevenbiss@earthlink.net

Counsel for Plaintiff

A Copy,
Teste: BEVILL M. DEAN, CLERK
BY:  D.C.

SEEN AND OBJECTED TO
FOR THE REASONS STATED IN THE
PLEADINGS AND ON THE RECORD
AT THE HEARING ON MARCH 24, 2008:



Robyn M. Seabrook (VSB # 65921)
Harrell & Chambliss LLP
Eighth & Main Building, Suite 1000
707 East Main Street
Richmond Virginia 23219
Telephone: (804) 643-8401
Facsimile: (804) 648-2707

Counsel for Defendant