

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND
John Marshall Courts Building

CAROL A.O. WOLF)

Plaintiff,)

v.)

THE CITY OF RICHMOND, VIRGINIA)

Defendant.)

Case No. _____

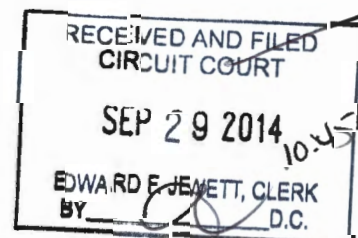
VERIFIED COMPLAINT

Plaintiff, Carol A.O. Wolf, files the following Complaint against defendant, The City of Richmond, Virginia.

Plaintiff moves the Court to enjoin the release and production of information and documents pursuant to the Virginia Freedom of Information Act, § 2.2-3700 *et seq.* of the *Virginia Code (1950)*, as amended (the "Act"), and for an award of costs and attorney's fees incurred pursuant to the Act.

Parties

1. Plaintiff, Carol A.O. Wolf ("Carol"), lives in Richmond, Virginia.
2. Defendant, The City of Richmond, Virginia (the "City"), is the City of Richmond, Virginia, a "public body" within the meaning of the Act.
3. Venue for this action is proper in the Circuit Court for the City of Richmond pursuant to § 22.2-3713(A)(1) of the Virginia Code.



The FOIA Request

4. On September 15, 2014, Carol served the City with a request for information and documents pursuant to the Act (the "FOIA Request") relating to the resignation of Byron Marshall as City CAO. Carol requested, *inter alia*, (a) copies of certain confidentiality agreements, (b) the separation agreement between the City and Mr. Marshall, and (c) a copy of Mr. Marshall's resume and documents to verify his education and employment history.

5. On September 16, 2014, the City responded to Carol's FOIA Request. In its response, the City claimed that the confidentiality agreements were privileged and that the separation agreement between the City and Mr. Marshall, Mr. Marshall's resume and other documents were "personnel records".

6. On September 17, 2014, Carol replied to the City's response.

7. True and complete copies of Carol's FOIA Request, the City's response, and Carol's reply are attached hereto collectively as Exhibit "A".

City *SSA*
The City's Responses Are Materially Incomplete

8. The records Carol seeks are "public records" within the meaning and scope of the Act. The records were "prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business."

9. The City's response is neither well-grounded in fact, nor warranted by existing law. The confidentiality agreements are not protected by the attorney-client privilege. Even if the confidentiality agreements were privileged – and they are not – the City waived the privilege. The separation agreement (and any related financial agreements) is not a personnel record. It is an amendment of the terms of Mr. Marshall's

employment agreement, which the City concedes must be released under FOIA. Marshall's resume and related documents describing his education and employment history are, likewise, not personnel records.

10. The City's willful decision to conceal the confidentiality agreements, separation agreement, resume and other information, and to withhold the documents from production is not undertaken in good faith or for any proper purpose.

11. The City's response constitutes a failure to respond within the five (5) working day period provided by § 2.2-3704 of the Act. Section 2.2-3704.E is express and unequivocal: "Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter." The City's failure to respond is a violation of the Act.

CONCLUSION AND REQUEST FOR RELIEF

For the reasons stated above and at the hearing of this matter, Carol respectfully requests the Court to:

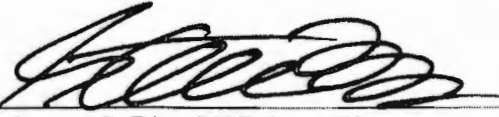
- A. Enjoin the City to immediately make a complete response to the FOIA Request and to produce all public records that are responsive to the FOIA Request; and
- B. Award judgment for Carol's costs and attorney's fees; and
- C. Award penalties against the City officers responsible for the willful violations of the Act in accordance with § 2.2-3714 of the Virginia Code.

DATED: September 29, 2014

Signature of Counsel on Next Page

CAROL A.O. WOLF

By: _____


Steven S. Biss (VSB # 32972)
300 West Main Street, Suite 102
Charlottesville, Virginia 22903
Telephone: (804) 501-8272
Facsimile: (202) 318-4098
Email: stevenbiss@earthlink.net

Counsel for the Plaintiff

V-E-R-I-F-I-C-A-T-I-O-N

I have reviewed the above Complaint, and I swear or affirm that the facts alleged are truthful and accurate to the best of my knowledge and belief based upon documents and information in my possession and control, based upon the FOIA Request and the City's response, and based upon documents believed to be in the possession, custody and control of the City and others.

In accordance with § 8.01-4.3 OF THE Virginia Code (1950), as amended, I declare, certify, verify, and state under penalty of perjury that the foregoing is true and correct.

Executed in Richmond, Virginia, on September 29, 2014.



STEVEN S. BISS

EXHIBIT “A”

-----Original Message-----

From: wolfies <wolfies@aol.com>
To: Tammy.Hawley <Tammy.Hawley@Richmondgov.com>; Allen.L.Jackson
<Allen.L.Jackson@Richmondgov.com>
Sent: Wed, Sep 17, 2014 12:25 pm
Subject: Re: FOIA Request ...

Ms. Hawley, Mr. Jackson:

It is absurd to say that an agreement is an attorney-client privileged communication because it was prepared by a lawyer. If that is all it takes to preclude disclosure of the document, then no contract would be discoverable because they are almost all prepared by lawyers and then communicated to their client.

However, your stated rationale for refusing to provide even an unsigned copy of the so-called Confidentiality Agreement and a list of the City Council members who signed it (or did not sign it), raises the question of just who is the client in this matter. Clearly, the client is NOT City Council members individually nor collectively since they did not ask counsel to prepare such a document prior to learning (or not learning) the details of Mr. Marshall's departure from Richmond City Hall and the terms of his buyout package.

Consequently, this document and the information contained therein has already been disclosed to "non-clients." As I am sure you are aware, Mr. Jackson, disclosure to a third party constitutes a waiver of attorney-client privilege.

The idea that the terms of an executive's employment contract -- in fact, the highest ranking official in Richmond City government -- can be shielded from the public and taxpayers because it is a "personnel matter" is ethically offensive. This logic might work in private business, but it has no place in public policy. If the details of employment and the details of the departure from public employment can be shielded, the city could enter into outrageous contracts and never need to reveal what is happening to public money. Recall the case of what happened in Bell, California. (<http://timelines.latimes.com/bell/>). The Los Angeles Times won a Pulitzer Prize for their investigations into what was dubbed "Corruption on Steroids" <<http://timelines.latimes.com/bell/>>," a scandal about a small city "whose leaders paid themselves outsized salaries."

I hope you know that I have no personal issue with either of you. I know you are simply trying to do your jobs. Having served as an elected official and as a journalist, I know there are dedicated individuals in government who are truly public servants doing their utmost to safeguard the public's money and trust. That said, I hope that you will reconsider your decision that the documents I have requested are shielded and not subject to public disclosure. And Mr. Jackson, I ask that you recognize that the public offices -- and not the people who occupy them -- as well as the citizens of Richmond are your real clients.

Meanwhile, Ms. Hawley, I ask that you please provide a copy of the job description for CAO that was in effect prior to 2009 so I can determine what changes were made immediately prior to employing Mr. Marshall. Additionally, the information you provided in your e-mail of Sept. 4, 2014 concerning Ken Johnson and the compensation he and his company have received from the City of Richmond was "interesting," but non-responsive to my FOIA request. I look forward to receiving the remaining information from my Sept. 2, 2014 e-mail to your office.

Respectfully,

Carol A.O. Wolf

-----Original Message-----

From: Hawley, Tammy D. - OPS <Tammy.Hawley@Richmondgov.com<<mailto:Tammy.Hawley@Richmondgov.com>>>
To: wolfies <wolfies@aol.com<<mailto:wolfies@aol.com>>>
Sent: Tue, Sep 16, 2014 5:35 pm
Subject: RE: FOIA Request

Hello Ms. Wolf,

In response to your FOIA request below, please be aware of the following:

1. The requested confidentiality agreements, which were executed by legal counsel and handled under the direction and advise of legal counsel are being withheld under the attorney/client privilege exemption (Va. Code § 3705.1(2)) as well as the personnel record exclusion.
- 2.. The document is a personnel record not subject to disclosure under the FOIA, Va. Code §§ 2.2-3705.1(1) and 2.2-3705.8(A)(i). The separation agreement itself also provides for confidentiality.
3. All such documents (however many there may be) are personnel records not subject to disclosure under the FOIA, Va. Code §§ 2.2-3705.1(1).
4. Attached is a copy of the employment agreement and a record of compensation (real and deferred). I have also attached a reproduced copy of the job description for the position of CAO as available on the city's website.

Thanks.

From: wolfies@aol.com<<mailto:wolfies@aol.com>> [<mailto:wolfies@aol.com><<mailto:wolfies@aol.com>?>]
Sent: Monday, September 15, 2014 1:52 PM
To: Hawley, Tammy D. - OPS; Jackson, Allen L. - City Attorney
Subject: FOIA Request

Ms. Hawley:

Please provide me:

- 1.) the names of the City Council members who signed confidentiality agreements with any agent(s) or representative(s) of the City of Richmond concerning the recent resignation of Byron Marshall as CAO;
- 2.) any and all documentation that provides the details of the severance package and any and all other financial agreements between Byron Marshall and any agent(s) or representative(s) of the City of Richmond;
- 3.) copies of the resume and all other documents Byron Marshall originally submitted when he applied for employment with the City of Richmond and all documents submitted since that verify his education and employment history;
- 4.) and copies of all employment agreement(s) between Byron Marshall with any agent(s) or representative(s) of the City of Richmond, including all addendums, job descriptions and duties, including all forms of compensation, real and deferred.

Respectfully,

Carol A.O. Wolf

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804.264.8015
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wolfies@aol.com<<mailto:wolfies@aol.com>>