

Commonwealth of Virginia

JUDGES

STEVEN C. MCCALLUM
DAVID E. JOHNSON
EDWARD A. ROBBINS, JR.
JAYNE A. PEMBERTON
M. DUNCAN MINTON, JR.
STEVEN B. NOVEY

JOHN F. DAFFRON, JR.
WILLIAM R. SHELTON
MICHAEL C. ALLEN
HERBERT C. GILL, JR.
HAROLD W. BURGESS, JR.
T.J. HAULER
FREDERICK G. ROCKWELL, III
LYNN S. BRICE
RETIRED



COUNTY OF CHESTERFIELD
CITY OF COLONIAL HEIGHTS

JUDGES' CHAMBERS
POST OFFICE BOX 57
CHESTERFIELD, VIRGINIA 23832-0057
(804) 748-1333

TERESA L. RYAN
ADMINISTRATOR OF JUDICIAL OPERATIONS

TWELFTH JUDICIAL CIRCUIT

August 29, 2024

Katherine C. Gill, Esquire
Chesterfield County Attorney
P.O. Box 40
Chesterfield, VA 23832-0040

Andrew T. Bodoh, Esquire
Thomas H. Roberts & Associates, P.C.
105 S. 1st Street
Richmond, VA 23219

Re: *Alice Minium v. Chesterfield County*
Case No. CL23-2798-00

This matter came before the Court on June 13, 2024, for argument on Petitioner Alice Minium's Writ of Mandamus (hereinafter "Minium") against Respondent Chesterfield County (hereinafter "Chesterfield"). At the hearing, the Court was provided Minium's Bench Brief. Chesterfield was given an opportunity to respond and filed its Post-Trial Memorandum in Opposition to the Petition for Writ of Mandamus on June 21, 2024. Minium filed her Reply to Chesterfield's Post-Trial Memorandum on July 5, 2024.

Upon careful consideration of the pleadings, testimony, oral arguments, briefs, and the applicable law, the Court now renders the following opinion.

Statement of Facts

Minium's Petition for a Writ of Mandamus comes before the Court as a trial de novo on the appeal of her Writ of Mandamus filed in the General District Court for Chesterfield County on June 14, 2023. The parties stipulate and agree that Minium, on behalf of OpenOversight VA, sent an email request pursuant to the Virginia Freedom of Information Act (hereinafter "FOIA") to Chesterfield and the Chesterfield Police Department (hereinafter "the Department") on March 20, 2023. In her request, Minium asked for the "roster of all sworn law enforcement officers employed with Chesterfield Police as of today's date." Specifically, the request sought an electronic spreadsheet and/or documentation consisting of the full name, badge number, rank/job title, bureau/precinct, shift/unit, squad, date of first hire, date of current hire, years of law enforcement experience, 2022 salary, and 2022 overtime pay of each officer employed by the Department. Later that morning, Chesterfield's FOIA Liaison responded to Minium's request, copied the Department to her response, and advised Minium that the Department handles its own FOIA requests directly.

On March 27, 2023, the Department's FOIA Specialist, Tiffany Valenta (hereinafter "Valenta"), responded to Minium's request and provided a 10-page roster that included the name, department, title, and annual/hourly salary of its officers. Valenta stated that "some personnel information" was exempt pursuant to Virginia Code § 2.2-3705.1(1). In addition, the response acknowledged that some of the names had been redacted pursuant to Virginia Code § 2.2-3706(B)(8).

On April 8, 2023, Minium sent follow-up correspondence, repeating her original request for information, and noting that she did not agree with the FOIA exemptions cited by the Department. Minium also provided a modified request seeking the full name, badge number,

rank/job title, bureau/precinct, shift/unit, squad, date of first hire, date of current hire, 2022 salary, and 2022 overtime pay of each officer employed by the Department. The modified request excluded the original request's solicitation for information regarding years of law enforcement experience. Minium noted that she would like to resolve the matter, but was preparing to file a Writ of Mandamus if a resolution was not reached.

On April 17, 2023, Minium sent the Department another letter noting that she had not received a response to her April 8th letter, and she was prepared to file her Writ of Mandamus in Chesterfield General District Court on April 21, 2023. On April 17, 2023, a letter was sent on behalf of Chesterfield reiterating its previous position. The response stated that pursuant to Virginia Code § 2.2-3705.1(1), the Department was only required to provide the names, rank/job, and salary of the law enforcement officers. The letter further explained that the names of officers with a rank of lieutenant or below could not be provided due to the structure and operational logistics of the Department and its undercover operations. Specifically, Chesterfield cited Virginia Code § 2.2-3706(B)(8) and § 2.2-3706(B)(10) as the basis for the redacted records. In response, Minium filed her Writ of Mandamus in Chesterfield General District Court.

Summary of Evidence

On June 13, 2024, this Court held an evidentiary hearing on Minium's Writ of Mandamus to determine if the exclusions cited by Chesterfield were sufficient to overcome Minium's FOIA request. Pursuant to Virginia Code § 2.2-3706 (E), Chesterfield bears the burden of proof on this issue and must establish by a preponderance of the evidence that the exclusion applies. In support of her Writ of Mandamus, Minium provided the Court with the parties' Agreed Stipulations, including her March 20, 2023, FOIA request, Chesterfield's initial responses, a series of correspondence from Minium to Chesterfield, and Chesterfield's April 17, 2023, letter in response.

At the June 13, 2024, hearing, Major Andrea Riesmeyer (hereinafter “Major Riesmeyer”) was the only witness to testify. Major Riesmeyer testified that she had twenty-five years of law enforcement experience with Chesterfield County. Tr. of Test. at 3-4. Major Riesmeyer provided multiple examples of the different law enforcement divisions she has worked with, including patrol, detective, special investigations, tactical investigations, training division, and community engagement. Tr. of Test. at 21.

Major Riesmeyer confirmed that the Department performs a wide range of undercover operations. Major Riesmeyer described the Department’s undercover operations as “robust,” with many operations occurring on a daily basis. Tr. of Test. at 22. These undercover operations include plainclothes officers, unmarked vehicles, fictitious names and identities, and disguises. Major Riesmeyer described some operations as reactive in nature, where plainclothes officers are deployed to an area where a crime spike has occurred. Tr. of Test. at 23. Conversely, other operations are proactive in nature and occur when law enforcement anticipates crime to increase based on past indicators. Tr. of Test. at 23. Additionally, the Department conducts “enhanced undercover operations” where officers pose as someone else to help establish probable cause for a larger-scale investigation, such as identifying a drug dealer or human trafficker. Tr. of Test. at 24.

All patrol officers, sergeants, and lieutenants may be called upon “on any given day for any reason” to go undercover. Tr. of Test. at 24. Undercover operations range from patrolling in an unmarked vehicle, engaging in surveillance, or posing as potential victims of crimes. Tr. of Test. at 25. Furthermore, officers within the Department have a variety of “roles that they will play during the course of their employment.” Tr. of Test. at 25.

Major Riesmeyer elaborated on the Department’s undercover operations by discussing her own involvement as an undercover officer over the course of her career. Major Riesmeyer stated

that shortly after she graduated from the academy, she was assigned to investigate a string of burglaries by patrolling the area as a plainclothes officer in an unmarked vehicle. Tr. Of Test. at 25. Major Riesmeyer also testified that when she was a detective, she was asked to pose undercover as a prostitute. *Id.* As a Sergeant, Major Riesmeyer assigned officers to work undercover in response to a wide range of crimes occurring in the County. Tr. Of Test. at 27. As a Lieutenant, Major Riesmeyer specifically remembers assigning plainclothes officers to map out a wooded area adjacent to an apartment complex where a string of robberies had occurred. Tr. of Test. at 29. As a Captain, Major Riesmeyer deployed a series of undercover officers to a high crime area throughout the summer of 2022. *Id.* Major Riesmeyer stated that sixty-three officers were involved in numerous arrests that summer due to their participation in undercover operations. *Id.*

Major Riesmeyer further testified that due to the structure of the County's operations, all officers, sergeants, and lieutenants can be called upon at any time to serve as an undercover officer. Tr. of Test. at 33. Major Riesmeyer confirmed that the list of redacted names provided to Minium are all undercover officers. *Id.* Major Riesmeyer expressed concern that the Department would be hindered in its ability to perform undercover operations if the names of all Chesterfield undercover officers are disclosed. Disclosing the names of all undercover officers would limit the Department to only performing reactive policing, after a crime has already occurred. Tr. of Test. at 34.

On cross examination, Major Riesmeyer was asked additional questions regarding the structure of the Department. Major Riesmeyer again confirmed that an officer with the rank of Lieutenant or below does not have to be undercover every single day to be considered an undercover officer because of any officer's potential to be moved into an undercover assignment

at any time. Tr. of Test. at 42. When specifically asked, Major Riesmeyer stated that she was not responsible for scheduling and could not testify as to which officers were involved in the special investigations division, assigned to unmarked cars, or engaged in plainclothes operations. Tr. of Test. at 61-62. Major Riesmeyer further confirmed that she could not testify as to which officers were assigned cover roles, names, or stories in March of 2023. Tr. of Test. at 63.

Major Riesmeyer was also asked if the person making the FOIA request would be able to tell if an officer was staffing an undercover operation by the Department's disclosure of her name in response to the FOIA request. Major Riesmeyer responded that by providing the name of the officer, the Department would be prevented from ever staffing him in any undercover role after the disclosure was made. Tr. of Test. at 67. Major Riesmeyer did concede that on March 20, 2023, uniformed officers were working in the County, and all of their names were not disclosed. Tr. of Test. at 70-71.

Analysis/Ruling

FOIA exists to ensure that the people of the Commonwealth have readily available access to "public records in the custody of a public body or its officers and employees." Va. Code § 2.2-3700. FOIA shall be "liberally construed," and all exemptions "shall be narrowly construed and no record shall be withheld . . . unless specifically made exemption pursuant to this chapter." *Id.*

A writ of mandamus is one of the remedies available under Code § 2.1-346 [now § 2.2-3713] when a person is denied rights and privileges conferred under the provisions of FOIA. *See* Va. Code § 2.2-3713. However, "[a] writ of mandamus is an extraordinary remedial process, which is not awarded as a matter of right but in the exercise of a sound judicial discretion." *Lawrence v. Jenkins*, 258 Va. 598, 602-03 (1999) (emphasis added) (citation omitted). A court shall issue a writ of mandamus "where the petitioner has a clear right to the relief sought, the respondent has a

legal duty to perform the act which the petitioner seeks to compel, and there is no adequate remedy at law.” *Town of Front Royal v. Front Royal & Warren County Indus. Park Corp.*, 248 Va. 581, 584 (1994). “[I]n doubtful cases, the writ will be denied.” *Id.* at 603.

When a County invokes a FOIA exemption, the County must prove by a preponderance of the evidence that the exclusion applies. *See* Virginia Code § 2.2-3706 (E). Minium argues the information redacted in Chesterfield’s response to her FOIA request does not fall within the scope of the specific exemptions cited by Chesterfield as the basis for their redactions. The specific exclusions of FOIA at issue in this case are Virginia Code § 2.2-3706(B)(8) and § 2.2-3706(B)(10):

B. Discretionary releases. 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 records of any records containing information related to undercover operations or protective detail that would reveal the staffing, logistics, or tactical plans of such undercover operations or protective details. Nothing in this subdivision shall operate to all the withholding of information concerning the overall costs or expenses associated with undercover operations or protective details;

10. The identity of any victim, witness, or undercover officer, or investigative techniques or procedures. However, the identity of the victim or witness shall be withheld if disclosure is protected or redacted under § 19.2-11.2. . .

It is not disputed that the names of law enforcement officers can be made available to the public subject to a FOIA request. *See Harmon v. Ewing*, 285 Va. 335 (2013); Va. Code § 2.2-3705.1. Nevertheless, the Court must determine if the statutory exemptions claimed by Chesterfield apply in this specific case. In deciding whether Virginia Code § 2.2-3706(B)(8) and § 2.2-3706(B)(10) apply, the Court is asked to determine whether an officer is “undercover” such that revealing her name pursuant to a FOIA request would reveal the identity, staffing logistics, or

tactical plans of undercover operations or protective details. Looking to the statute, it is important to note that a definitional section is not provided for the term “undercover.”

In Virginia, “the primary objective of statutory construction is to ascertain and give effect to legislative intent”. *Turner v. Commonwealth*, 226 Va. 456, 459 (1983). When the Virginia General Assembly passes or amends a law, it is “presumed to act with full knowledge of the law as it stands”. *Sch. Bd. Of Stonewall District v. Patterson*, 111 Va. 482, 487-88 (1910). For purposes of statutory interpretation, “[t]he plain, obvious, and rational meaning of a statute is to be preferred over any curious, narrow, or strained construction.” *Turner*, 226 Va. at 459.

Specifically, in construing FOIA, the Court must abide by the plain and ordinary meaning of words chosen by the General Assembly. *See Suffolk City Sch. Bd. v. Wahlstrom*, 302 Va. 188, 206 (2023). However, in affording statutory language its plain and ordinary meaning, the Court remains “cognizant of context.” *Id.* Furthermore, absent a statutory definition, an undefined word should be defined by its standard dictionary definition. *See Phelps v. Commonwealth*, 275 Va. 139, 142 (2008).

The term “undercover” is defined by *Webster’s II New Riverside Dictionary* as “acting or carried on in secret.” *Webster’s II New Riverside Dictionary* 746 (Berkley ed. 1984). Chesterfield provided three additional dictionary definitions from *The Britannica Dictionary*, *American Heritage Dictionary*, and *The New Shorter Oxford English Dictionary*, all supporting the definition of acting or occurring in secret.

Chesterfield asserts that all undercover officers work in secret to gather information and arrest suspects. Minium asserts that the definition of “undercover” should be narrowly read to mean engaged in a “secret operation.” Minium argues that this narrow reading would exclude “plain clothes” operations. In support of her position, Minium offers the U.S. Attorney General’s

guidelines for the Federal Bureau of Investigation's description of undercover operations noting that "a person's relationship with a law enforcement agency is concealed from third parties during the course of a police investigation through the use of a cover identity or alias." Bench Brief of Petitioner at 7. The Court finds this argument contrary to the tenants of statutory interpretation which specifically state that those construing a statute may not "add to the words" to the statute at issue. *Turner*, 226 Va. at 459.

Minium further asserts that the exemption outlined in Virginia Code § 2.2-3706(B)(10) should be limited to the names of officers serving in an undercover operation on the date of the request, March 20, 2023, and that Chesterfield cannot claim the exemption as to all officers that work in an undercover capacity. However, based on Major Riesmeyer's uncontroverted testimony, the Court finds that the Department is structured in a manner where officers with the rank of police officer, sergeant, and lieutenant are all utilized as undercover officers.

Based upon the evidence before this Court, we find that Chesterfield established, by a preponderance of the evidence, that withholding the names of undercover officers falls within the FOIA exemptions outlined in Virginia Code § 2.2-3706(B)(8) and § 2.2-3706(B)(10).

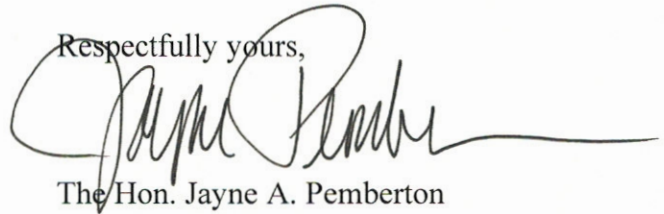
The Writ of Mandamus is an extraordinary remedy that shall be granted only when a petitioner has a clear right to the relief sought. Absent a statutory definition of "undercover," this Court finds that the Chesterfield's use of the FOIA exemptions outlined in Virginia Code § 2.2-3706(B)(8) and § 2.2-3706(B)(10) are proper and Minium is not clearly entitled to the relief sought. Additionally, remaining cognizant of context in which the plain and ordinary reading statutory language exists, the Court must always balance "an increased awareness by all persons of governmental activities" and the safety and security of law-enforcement personnel and the general public. Va. Code § 2.2-3700; see *Suffolk City Sch. Bd*, 302 Va. at 206.

Accordingly, it is adjudged, ordered, and decreed that Minium's Writ of Mandamus is denied.

Conclusion

The Court asks that Ms. Gill please draft an Order reflecting this Court's ruling, circulate it to Mr. Bodoh for his noted objections and endorsement, and submit it to the Court by September 30, 2024. The Order will be final for purposes of appeal and should include language indicating the same.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Jayne Pemberton", with a long horizontal flourish extending to the right.

The Hon. Jayne A. Pemberton