

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND
Civil Division

CONNIE CLAY,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF RICHMOND,)
)
 Serve: Laura K. Drewry, Esq.)
 City Hall)
 900 East Broad Street)
 Richmond, Virginia 23219)
)
 and)
)
 PETULA BURKS,)
)
 Serve: Petula Burks)
 City Hall)
 900 East Broad Street)
 Richmond, Virginia 23219)
)
 Defendants.)

Case No.: 24-921 EGC

RECEIVED AND FILED
 CIRCUIT COURT
 MAR 01 2024
 EDWARD F. JEWETT, CLERK
 BY *[Signature]* D.C.

COMPLAINT AND JURY DEMAND

Connie Clay ("Clay"), by counsel, states the following as her Complaint against the City of Richmond, Virginia (the "City") and the Director of the Office of Strategic Communications and Civic Engagement for the City, Petula Burks ("Burks") (collectively, "Defendants"):

NATURE OF THE ACTION

It is the policy of the Commonwealth of Virginia, pursuant to the Virginia Fraud and Abuse Whistle Blower Protection Act (the "Act"), Virginia Code §§ 2.2-3009 *et seq.*, that citizens and governmental employees be able to freely report instances of wrongdoing or abuse committed by governmental agencies like the City of Richmond without suffering retaliation.

Clay is an attorney who until recently worked for the City as its Freedom of Information Act ("FOIA") Officer and Public Information Manager. When Clay began with the City in Summer, 2023, she realized that the City routinely violated its FOIA obligations set forth in Virginia Code § 2.2-3704 *et seq.*, and that the City's process for handling FOIA requests was chaotic and mismanaged. Clay did everything she could to right the wrongs she encountered, including reporting violations to her supervisor, Petula Burks. Nonetheless, Clay was silenced by Burks and others and prevented from properly doing her job.

Twice during Clay's truncated tenure, she was sued to turn over records pursuant to FOIA requests, exposing her to potential personal liability and fines. In both cases, Clay intended to turn over the requested information from the outset but was overruled by Burks and directed to withhold information. In each case, the lawsuit was withdrawn when City finally turned over the required information to the requester.

Despite Clay's positive performance record, including creating and presenting training to the City on FOIA rules, Burks terminated Clay because she was "not a good fit" for the City. As alleged below, the City unlawfully terminated Clay in retaliation for her whistleblowing about the City's ongoing FOIA violations and lack of transparency.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this civil action pursuant to Virginia Code § 2.2-3011(D).
2. This Court has personal jurisdiction over the Defendants because they regularly conduct business and work in the City of Richmond and the events or omissions by the Defendants giving rise to the claims occurred in the City of Richmond.
3. Venue is proper in this Court pursuant to Virginia Code § 2.2-3011 (D).

PARTIES

4. Clay is, and at all times relevant to this Complaint was, a citizen of the Commonwealth of Virginia. Clay resides in Chesterfield County, Virginia.
5. The City of Richmond is a governmental agency located in the Commonwealth of Virginia. The current Mayor of the City is Levar Stoney ("Stoney").
6. Petula Burks ("Burks") is a citizen of the Commonwealth of Virginia and works in the City of Richmond.
7. Clay and Burks worked at all relevant times in City Hall for the City of Richmond, located at 900 East Broad Street, Richmond, Virginia 23219.

FACTUAL ALLEGATIONS

8. Clay began working for the City of Richmond in July 2023 as the City's FOIA Officer/Public Information Manager, Senior. In that role, Clay was responsible for processing FOIA requests for 27 City departments.
9. Clay's immediate supervisor was Petula Burks. Her title is Director of the Office of Strategic Communications and Civic Engagement for the City of Richmond.
10. Clay never received a job description or performance goals. During a group meeting on or about September 2023, Burks promised to meet with each member about their individual performance goals. Burks never met with Clay.
11. Though Burks was the acting FOIA Officer before Clay accepted the position, Burks did not offer Clay one-on-one training. Clay arranged her own training by participating in virtual training with the Commonwealth of Virginia's Freedom of Information Act Advisory Council ("FOIA Council"), a state agency whose job it is to help resolve FOIA disputes within the Commonwealth of Virginia.

12. During her training and research, Clay learned that with few exceptions public records are to be open to inspection. *See* Va. Code § 2.2-3704. Specifically, Clay learned and at all times understood the following:
 - a. FOIA requires a public body like the City to release requested records within five working days of receiving a request.
 - b. If it is not possible to produce the records within five working days, an extension is permitted *if* the public body provides notice to the requester within the five-day period stating the reason it cannot comply with the five-day deadline. Only then can a public body invoke an additional seven working days to produce the records. *See* Va. Code § 2.2-3704.
 - c. Failure to properly respond to a request for records is deemed a denial of the request and constitutes a violation of FOIA. *See* Va. Code § 2.2-3704 (E).
 - d. When records contain excluded and non-excluded information, the public body has a duty to redact the excluded information and release the non-excluded information, *See* Va. Code § 2.2-3704.01.
13. When Clay began working with the City, Burks instructed Clay that each time she received a FOIA request, she should wait until the day the response was due and then invoke an extension of seven working days regardless of whether the City could timely produce the required information.
14. When Clay took over for Burks, Clay learned that while Burks was the acting FOIA officer, Burks (a) did not have a docketing system, (b) did not have an invoicing system, and (c) had allowed several FOIA requests to become weeks overdue.

15. One of the overdue requests was from Paul Goldman ("Goldman"). Goldman made a proper FOIA request for casino proposals submitted to the City in 2021 and 2023. The Mayor's Office, the Department of Economic Development, and the Office of the Chief Administrative Officer were involved in this FOIA request.
16. After Clay reviewed the 2021 and 2023 proposals, she told Burks that minor redactions were needed, but that there was no legal basis to withhold the release of the proposals.
17. Although the FOIA response was already late, Burks required Clay to withhold the release of the documents, because Burks said she wanted time for the Mayor's Office, Economic Development, and Urban One to inform the public that the casino proposed in the 2023 referendum would not be Black-owned as promised in the 2021 referendum.
18. In August 2023, Clay received a FOIA request for City employee salaries, including overtime. Robin Redmond ("Redmond") in the City's Department of Human Resources ("HR") was in charge of releasing the records. Redmond did not feel that she should have to release the overtime records. Sabrina Joy-Hogg ("Joy-Hogg"), Deputy Chief Administrative Officer for the City, supported Redmond's refusal to release the records.
19. When Redmond refused to release the overtime records, Clay informed Burks that withholding the overtime records was a violation of FOIA. Burks told Clay that Joy-Hogg supported Redmond's refusal. Clay told Burks that there was no legitimate reason to withhold the overtime records, that Henrico County and Chesterfield County had released their overtime records in response to FOIA requests made several years ago, and that the requester of the City's overtime records recently prevailed in a FOIA lawsuit against the City of Norfolk.

20. Burks instructed Clay to respond to the FOIA request without the overtime records. Clay released the salary records without the overtime records.
21. The requester, Joshua Stanfield ("Stanfield") sent several emails to Clay and to the City Attorney threatening to sue the City for refusing to release the overtime records.
22. Clay said to Burks that she (Clay) did not want her name connected to the wrongful withholding of records, because she believed it to raise ethical and other issues.
23. Burks agreed that when Clay had ethical concerns regarding the withholding of records, Burks would handle those FOIA requests.
24. Stanfield sued the City and named Clay as a defendant in her capacity as the FOIA Officer. The City released the overtime records and Stanfield withdrew his lawsuit.
25. On August 14, 2023, Clay received a FOIA request from Mike Sarahan ("Sarahan"), an attorney who once worked for the City. Sarahan requested records related to the City's erection of a Confederate shrine at the Wise Street substation.
26. When Clay discussed this FOIA request with Burks, Burks told Clay that the City had responded to the request months ago.
27. Upon investigation, Clay learned that Burks previously responded to Sarahan that the City would charge him \$3,000 to research and retrieve the records he requested. Clay believed this was an attempt to avoid complying with FOIA by imposing an unreasonable fee for the research and retrieval of records. Clay did not believe that responding to the request would involve the City's incurring costs of \$3,000.
28. Clay reported to Burks that Sarahan's request had not been fulfilled, in violation of FOIA. Burks then gave Clay several emails responsive to Sarahan's FOIA request which had not

- previously been provided to Sarahan. Clay redacted and released the emails to Sarahan, more than a year after Sarahan first made a proper FOIA request for them.
29. Around this time, Clay gave Burks a printed copy of Virginia Code § 2.2-3704.2, which describes the responsibilities of a FOIA Officer including coordinating the public body's compliance with the FOIA. Clay reported to Burks that she (Clay) was being blocked from fulfilling her statutory responsibilities by Burks' directing her to withhold records that the law requires be provided upon request. Clay expressed her concerns that the City officials with whom she interacted for FOIA requests had not been trained on what FOIA requires of the City. Clay contacted the FOIA Council and arranged for in-person training for City officials.
 30. Sarahan later submitted additional FOIA requests to the City. In November 2023, Clay notified April Bingham ("Bingham"), Director of the Department of Public Utilities, that Sarahan requested records of her correspondence regarding the erection of the Confederate shrine. Bingham did not respond to Clay.
 31. Clay then searched emails in the City's records management system and found over 100 emails that were related to the Confederate shrine. Bingham learned that Clay was reviewing her emails and sent Clay an email questioning her "motive."
 32. Clay responded to Bingham that Bingham had not responded to Clay's email and that she (Clay) needed to timely respond to the FOIA request. Bingham claimed that all responsive documents had been released in the past.
 33. The next day, Clay released the redacted emails to Sarahan.
 34. On information and belief, Sarahan then contacted Bingham directly and made a FOIA request for records of her communications with the Sons of Confederate Veterans.

35. Shortly thereafter, Clay's Outlook folder labeled "Bingham FOIA" was removed from her Outlook account. Clay reported this to Burks in person and by email.
36. Clay also discovered that there were problems with the delivery of emails to Connie.Clay@rva.gov and to FOIAOfficer@rva.gov. Clay reported these problems to Burks and to the City of Richmond's IT Department, but the problems were not addressed. Clay believed these suspicious IT issues had the effect of preventing FOIA requests from getting through to the City.
37. In August 2023, Clay received a FOIA request from Em Holter ("Holter"), a reporter with the Richmond Times Dispatch. Holter requested all FOIA logs for 2023. No logs were kept prior to Clay's arrival in July 2023, but Clay had prepared logs for July and August 2023.
38. Burks directed Clay to give the logs to her. Burks gave Clay's logs to the Mayor's Office and the Office of the Chief Administrative Officer for review.
39. Burks asked Clay to delete the columns on the logs with Clay's notes from correspondence with City officials from disclosure, even though no FOIA exemption covered such a redaction. Clay refused to remove the column that documented her correspondence with City officials. Burks interjected herself in the process and sent emails and left messages for Holter before she allowed Clay to release the logs.
40. In or about September of 2023, Burks asked Clay to serve as the Custodian of the Records for the City of Richmond. Clay told Burks that based on observation, the City did not keep records in the normal course of business and therefore she (Clay) would not serve in that capacity. Burks asked if Clay could serve in that capacity going forward without regard to how records had been handled in the past. Clay refused. For example, Clay had observed and reported to Burks that HR had a room full of paper employee files that was not locked

or secured in any way. Clay warned Burks that the employee file room was a massive data breach waiting to happen.

41. Clay was out of the office for about 10 days in September 2023. Burks agreed to manage the FOIA caseload in Clay's absence, but Burks did not. When Clay returned to work, the City had received several new FOIA requests that had not been acknowledged or fulfilled.
42. One of the unfulfilled FOIA requests was from Tyler Layne ("Layne"), a reporter with WTVR. Layne requested records related to the death of a City employee, Derrick Christian.
43. Burks decided that the records would not be released because there was an "active OSHA investigation." Clay told Burks that there was no FOIA exemption that would allow the withholding of the records. Clay requested that they obtain an expert opinion from FOIA Counsel. Burks did not respond.
44. Clay reiterated to Burks that Clay did not want her name connected to the wrongful withholding of records. Burks agreed to call Layne to tell him that it was her (Burks') decision to withhold the records. Burks never called Layne.
45. Layne filed a lawsuit against Clay seeking disclosure of the records he requested. Only then did the City release the records. Layne withdrew his lawsuit.
46. On or about September of 2023, Burks asked Clay to prepare and present a FOIA training for their department. Clay prepared and presented the training soon thereafter. Burks was out of the office for the training.
47. On November 15, 2023, while the lawsuits from Layne and Stanfield were pending, the assigned Assistant City Attorney ("ACA") emailed Clay questions, copying Burks. Clay explained to the ACA that Redmond and Joy-Hogg decided to withhold the overtime records and that Burks decided to withhold the Derrick Christian records.

48. Burks sent Clay a text and threatened Clay not to “put anyone else’s name out there.” Clay responded by email and reminded Burks that she (Clay) was the Defendant named in the lawsuits and was therefore potentially liable for the City’s wrongful withholding of records in violation of FOIA.
49. Clay’s relationship with Burks continued to deteriorate. The two were scheduled to meet every week, but Burks frequently canceled the meetings at the last minute and did not reschedule. Burks also advertised for a FOIA Officer position without telling Clay.
50. In December 2023, Burks requested a summary of accomplishments from everyone in the department. Clay prepared her summary of accomplishments and included the struggles she faced, including that (1) internal stakeholders were untrained in FOIA law, rights, and responsibilities, (2) the lawsuits against Clay were needless and caused by willful non-compliance of internal stakeholders, and (3) Clay had tremendous responsibility but minimal authority as the City’s FOIA Officer.
51. In December 2023, Clay received a FOIA request regarding the closure of the City Hall Observation Deck (“OD”). Clay received minimal information or cooperation from the Department of Public Works (“DPW”) other than a statement that the OD had been closed since 2019 due to “security concerns.” Clay reviewed hundreds of emails from DPW and discovered that the City’s policies for the use of the OD were inconsistent.
52. In a weekly team briefing, Clay reported her concerns to Burks. Burks convened a meeting with Clay and Michael Winborne (“Winborne”), the City’s Security Director, and E. Paige Hairston (“Hariston”), a public information specialist. During the brief meeting, Winborne and Burks reiterated that the OD was closed to the public. Burks stated that Winborne

would follow up with the requester. Burks instructed Clay to give Winborne the requester's contact information.

53. In January 2024, Clay received several FOIA requests regarding the City's meals tax. Sheila White ("White"), the City's Finance Director, needed to be involved in the responses.
54. Prior to January 2024, Clay experienced problems receiving cooperation from White while responding to FOIA requests. Clay had several meetings with Burks regarding White's refusal to cooperate with the processing of the prior FOIA requests, including one request that had been pending since April 2023.
55. As Clay received the FOIA requests regarding the meals tax, she forwarded them to White and copied Joy-Hogg and Burks. White's response was either that the records did not exist or that they were exempted "due to taxpayer privacy."
56. Holter then made a FOIA request for the redacted waiver applications in which the taxpayers reported problems with delayed or no receipt of these notices in the mail. White admitted that the records existed but said they were exempted due to taxpayer privacy. Clay told White that the records could be redacted to protect taxpayer privacy. White still refused to release them.
57. Clay warned Burks that more lawsuits would be filed due to the City's refusal to comply with the FOIA law. Clay reiterated that she would not misstate facts or the law.
58. On or about January 2024, Clay received two FOIA requests from a citizen whom Burks claimed worked for Abigail Spanberger's campaign for Governor. The proper FOIA requests sought records related to the Mayor's Office. Clay sent the requests to the Mayor's

Office, copying Burks, requesting that responsive documents be collected for production.

Clay then contacted HR and Procurement for assistance with collecting the records.

59. Burks emailed Clay directing that personnel records were to be excluded from disclosure.

Clay reminded Burks that salary records could not be excluded and that personnel records could be disclosed with the consent of the subject of the records. *See* Va. Code § 2.2-3705.1 (1).

60. Once Clay received Mayor Stoney's salary information from HR, she released it to the FOIA requester.

61. On January 4, 2024, Burks sent Clay a text message instructing her not to release any more "mayor files until further notice."

62. Clay also received an email from Mayor Stoney's Chief of Staff, Maggie Anderson ("Anderson"), stating that she would handle the FOIA requests for the Mayor's Office going forward.

63. Clay then received an email from Burks stating that Mayor Stoney's Press Secretary, Giani Snidle, would handle FOIA requests for the Mayor's Office going forward.

64. On January 11, 2024, Clay interviewed for the Civilian Review Board Manager position with the City of Richmond to transfer to a new position which did not report to Burks and because it paid more. Anderson was on the interview panel. Clay believed that the interview went well, and she was promised an answer by January 17, 2024. Clay sent thank you emails to everyone on the panel. Anderson responded to Clay's email and stated that, "We will be in touch soon."

65. On January 18, 2024, Clay requested a meeting with Burks to discuss the FOIA requests that were pending with the Finance Department. Burks directed Clay to request an

extension on the ground that only White could review and redact emails. Clay reminded Burks that she had decades of experience handling sensitive data, and that she could review and redact the emails. Burks did not want Clay to review and redact the emails. Clay reminded Burks that she would not misstate facts or the law for the City or any City Official.

66. During an email exchange with Burks on January 18, 2024, Clay noted that Burks refused to approve a \$125.00 expenditure for Clay to attend a Continuing Legal Education (“CLE”) course in the area, though Burks approved thousands of dollars for Burks’ attendance and the attendance of others at the Congressional Black Caucus Legislative Conference in Washington, D.C.
67. On January 19, 2024, Burks scheduled a meeting with Clay in the 5th Floor Conference Room. Burks and Clay normally met in Burks’ office, so Clay suspected that Burks was planning to formally reprimand Clay for her refusal to engage in illegal and unethical activities or fire her. Clay prepared a memo of items to discuss and delivered it to Burks a few hours before the scheduled meeting.
68. At the meeting, Burks terminated Clay stating that it was not a “good fit.” Burks gave no other explanation. Burks did not allow Clay an opportunity to respond to the termination.
69. Clay was terminated in retaliation for reporting and refusing to engage in illegal and unethical activities in violation of FOIA.
70. On January 30, 2024, Clay received an email from the HR Recruitment Team notifying her that she did not receive the Civilian Review Board Manager position with the City.
71. On February 2, 2024, the City hosted an event on the OD that was open to the public.

COUNT I
RETALIATION AND WRONGFUL DISCHARGE
VIRGINIA FRAUD AND ABUSE WHISTLE BLOWER PROTECTION ACT
VIRGINIA CODE § 2.2-3011

72. Plaintiff incorporates by reference and realleges each allegation set forth above.
73. In Count I, Clay claims that Burks and the City wrongfully discriminated and retaliated against her, because of her whistleblowing, causing her to suffer the adverse employment action of discharge, denial of transition to a different position, lost wages, and emotional distress, in violation of Virginia Code § 2.2-3011.
74. That statute states that “no employer may discharge, threaten, or otherwise discriminate or retaliate against a whistleblower whether acting on his own or through a person acting on his behalf or under his direction” and allows for plaintiffs to bring a civil action against their employer to remedy a violation. Va. Code § 2.2-3011.
75. “Employer” means a person supervising one or more employees, including the employee filing a good faith report, a superior of that supervisor, or an agent of the governmental agency. Va. Code § 2.2-3010.
76. Burks qualifies as an “employer” under Virginia Code § 2.2-3011.
77. Other people identified herein also qualify as an “employer,” including Anderson and Joy-Hogg.
78. Clay acted in good faith as a whistleblower by reporting the ongoing violations of FOIA.
79. In retaliation for Clay’s ongoing whistleblowing, the City and Burks terminated her as “not a good fit.”
80. The City’s, Burks’, and others’ actions described above violate Virginia Code § 2.2-3011.
81. The City’s, Burks’, and others’ actions described above have proximately caused Clay damages.

82. Clay has suffered severe mental and emotional distress, reputational harm, humiliation, and embarrassment.
83. Clay has suffered financial loss in the form of lost wages (front and back pay), lost paid time off, loss of participation in the Virginia Retirement System, and loss of transfer to the Civilian Review Board Manager position.
84. Burks acted intentionally, willfully, recklessly and maliciously against Clay and with utter and conscious disregard of Clay's rights.
85. The City is liable for its wrongful acts alleged herein. The city is liable for the wrongful actions of its agents and employees identified herein.
86. The City took no action to stop Burks or others from retaliating against Clay.

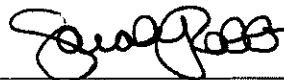
PRAYER FOR RELIEF

WHEREFORE, Clay respectfully requests that this Court enter judgment in her favor against Defendants and order the following relief as allowed by law: compensatory damages, including but not limited to those for emotional distress, inconvenience, mental anguish, loss of enjoyment of life and damaged reputation; lost wages; punitive damages against Burks; pre- and post-judgment interest at the highest lawful rate; attorney's fees pursuant to Virginia Code § 2.2-3011 (D) and costs including expert witness fees; costs; liquidated damages; and such further relief as this Court deems just and proper, including but not limited to (1) reinstating Clay to employment with the City in her former role or to the position to which she applied in January, 2024, lost wages including front and back pay, status as a non-probationary employee, and payment for loss of benefits in the interim, (2) enjoining Defendants from engaging in retaliation, and (3) ordering that Defendants engage in training and provide training to their employees regarding whistleblower protections. Clay is entitled to damages in an amount up to \$250,000.

JURY TRIAL DEMAND

Clay requests a trial by jury on all triable issues.

Respectfully submitted March 1, 2024.



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