

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

[REDACTED]

Petitioner,

v.

CASE NO.: _____

FAIRFAX COUNTY SCHOOL BOARD

Respondent.

SERVE:

John Foster

Division Counsel

Fairfax County Public Schools Division

8115 Gatehouse Rd.,

Falls Church, VA 22042

Pam Goddard

Executive Assistant and Clerk of the Board

Fairfax County School Board

8115 Gatehouse Road,

Suite 5400

Falls Church, VA 22042

PETITION FOR WRIT OF MANDAMUS AND INJUNCTIVE RELIEF

NOW COMES, [REDACTED], by counsel, and alleges the following:

- 1) This matter is brought under the Virginia Freedom of Information Act (FOIA) Virginia Code § 2.2-3713(A) which authorizes this Writ and gives this Court jurisdiction. Venue is proper in this Court pursuant to Va. Code § 2.2-3713(A)(1).
- 2) The Fairfax County School Board (FCSB) oversees the Fairfax County Public Schools (FCPS) Division. The FCPS Division is a subordinate organization to the FCSB
- 3) On June 24, 2015, pursuant to Virginia Code § 2.2-3700 *et. seq.*, [REDACTED] sent a Virginia Freedom of Information Act request by email to Brandynn Reaves, Public Information Specialist with the FCPS by email at 'Brandynn.Reaves@fcps.edu' stating:

"I would like to see a copy of the most current student payment spreadsheets for the FCPS Consumables Fees referenced on the attachment. (See Exhibit 1) The two payments in

question are indicated with arrows on each side->>>>>\$140 for Marching Band due August 11th, \$20 for Concert Band due November 1st<<<<<. I would like to see the accounting data printout for the entire school year showing income and expenses, as well as a copy of one bank statement from either November or December 2014 showing what bank account the fees were deposited into. I would also like to see a copy of one check for either the Marching or Concert Band fee that was deposited into the account, front and back, during the same month as the bank statement presented to me, obviously with appropriate redactions. I need to be able to see the name of the account owner on the back and to whom the check was made out to on the front. Email or disc please. [REDACTED]

4) The next day, on June 25, 2015, [REDACTED] again emailed Brandynn Reaves to clarify her request, stating:

"Brandynn-I took another look at this. I will actually take a bank statement and accompanying check from any month that the deposits were made in. With the Marching Band fee due August 11th, there are probably earlier applicable statements. Pick the easiest one. [REDACTED]"

5) On July 1, 2015 Brandynn Reaves sent by postal mail a response to several different FOIA requests made by [REDACTED], including the one at issue here. (See Exhibit 2).

With regard to the one at issue here Ms. Reaves informed [REDACTED] that:

"5. VFOIA request received June 24, 2015, for the West Potomac HS Band consumables fees for SY 2014-15.
• There are no responsive records at this time; we anticipate the documents will be available mid -August."

6) This response is not one permitted under Virginia Code § 2.2-3704. (B) and the timeline of providing response records in mid-August to a request made June 24, 2015 is well beyond the maximum statutory deadline contemplated by the Virginia FOIA.

7) On July 4, 2015, [REDACTED], having not yet received the response sent by postal mail from FCPS Information Specialist Brandynn Reaves, emailed Ms. Reaves a reminder and another copy of the FOIA request originally sent June 24, 2015.

8) On July 9, 2015 counsel for [REDACTED] sent a letter to the Superintendent of the FCPS Division and the Chairman of the FCSB objecting to the July 1 response to [REDACTED] June 24, 2015 FOIA request, noting that it was not a proper response and that it was improper for the Division to withhold records until mid-August. (See Exhibit 3). This

letter was sent by postal mail and was also sent by email to John Foster, the Division Counsel.

9) On July 14, 2015, in response to this letter, Ms. Reaves sent via email to [REDACTED] a notification that the FCPS was taking a seven day extension on the June 24, 2015 request, (which the FCPS mistakenly imputed to [REDACTED] July 4, 2015 follow up) under § 2.2-3704(B)(4). The email stated:

“Dear [REDACTED]:

This serves as the response to the requests listed below made pursuant to the Virginia Freedom of Information Act. Your requests were received July 6 and we have been working to obtain the requested information.

It is not possible as a practical matter to provide the requested information within the initial five-work-day period provided for by the Act. School system staff members are processing the request, which you have made. The system expects to provide a response to your request within the supplemental period of seven work days as provided for in Va. Code § 2.2-3704(B)(4).

Sincerely,

Brandynn Reaves

FOIA Officer/ Public Information Specialist

Office of Communications & Community Relations

Fairfax County Public Schools”

10) Following the invocation of this 7 working day statutory extension, records responsive to the request should have been provided to [REDACTED] by July 24, 2015.

11) However on July 29, 2015, at least five days after the records were due, John Foster, Division Counsel for the FCPS, sent a letter, as an email attachment, to counsel for [REDACTED] seeking an extension until August 10, 2015. (See Exhibit 4).

12) On July 30, 2015, [REDACTED] via counsel, denied the FCPS Division’s request for further extension, noting the request was over a month old, and that the Division had been given ample time to fulfill the FOIA request.

13) The records sought here related to the “FCPS consumable fees” for the West Potomac High School Marching Band and Concert Band. These fees are mandatory to participate in these classes and are required by the FCPS. Therefore records related to these fees are public records and are subject to the Virginia FOIA.

14) In his letter sent via email on July 29, 2015, Division Counsel John Foster claimed that records related to the “consumables fee” were “in the possession of the Treasurer for the West Potomac Band Boosters who has been out of the country since at least June 25, 2015,” thus causing the need for the extension. (See Exhibit 4)

15) The records being sought relate to payments made for the 2014-2015 school year and were made almost a year ago. One payment was due August 11, 2014 while the other was due November 1, 2014. (See Exhibit 1). Under the Guidelines for the Use of Marching Band Booster Organizations in the Collection and Disbursement of Student Fees all records must be stored at the school in question within one month of their creation if they are non-electronic records, or must be electronically placed on the FCPS network. (See Exhibit 5, p.7, Section IV, C.)

16) Moreover the Memorandum of Agreement between the West Potomac High School and the Booster organization specifies that the Booster organization will comply with the Virginia FOIA and provide the FCPS with records upon request. (See Exhibit 6).

17) Virginia Code § 2.2-3704 (J) requires that the FCPS retrieve and supply public records not maintained on FCPS property, or being stored by another party, to the requester within the statutory deadline.

18) Therefore the records are available to the FCPS Division at the present time and can be supplied in response to the FOIA request without continued delays.

19) In addition the records sought relate to the deposit of FCPS funds, which are required to be deposited in FCPS bank accounts.

20) The Division has access to these records through the bank into which the funds were deposited. Booster Organization Treasurers are obligated to deposit FCPS funds only into FCPS bank accounts, (See Exhibit 7, Slide 15) to which the Division would have access for the purpose of retrieving and providing responsive records.

21) The FCPS Division has not petitioned a Court of appropriate jurisdiction under § 2.2-3704 (C) for a further extension of time beyond the 7 working day extension it took on July 14, 2015.

22) As such the FCPS Division has not issued a timely response to the FOIA request. The 7 working day extension taken by the Division on July 14, 2015 expired by July 24, 2015.

23) The failure of the FCPS Division to issue a timely response to the June 24, 2015 FOIA request is considered a denial of the request under § 2.2-3704(E) and constitutes a violation of the Virginia FOIA. Such a violation by the FCPS may be ascribed to the FCSB and may be remedied by a court of appropriate jurisdiction pursuant to Virginia Code § 2.2-3713(A).

Prayer for Relief

WHEREFORE, the Petitioner respectfully prays, through counsel, that this Court,

a) Hold a hearing on this matter within seven days of the filing of the complaint as required by Va. Code § 2.2-3713(C);

b) Order the FCPS Division as a subordinate of the FCSB to conduct a good faith search of all public records within its possession for any records responsive to Petitioner's request and to acquire any such responsive records from others holding Division records;

c) Order the FCPS Division as a subordinate of the FCSB to provide all responsive records to Petitioner subject only to legitimate redactions and exemptions permitted under the Virginia FOIA;

d) Order the FCPS Division as a subordinate of the FCSB, pursuant to § 2.2-3713 (D) to pay Petitioner's reasonable costs and fees associated with this instant matter; and,

e) Order such necessary and proper injunctive relief or any other relief as this Court deems just and proper.

Respectfully submitted this ___ day of August, 2015,

By: _____
COUNSEL for _____

By Counsel:
Chaim Mandelbaum (Va. Bar No. 86199)
726 N. Nelson St, Suite 9
Arlington V.A. 22203
Telephone: (703) 577-9973

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Va. Code § 2.2-3713(C), a copy of this Petition for Writ of Mandamus and Injunctive Relief was provided three working days prior to its filing by email, and was mailed by postal mail on August 3, 2015 to John Foster, Division Counsel for the Fairfax County Public Schools Division. (It is noted that he requested all communications in the instant matter be sent to him. See Exhibit 4). That the copy of this Petition sent by electronic mail to John Foster, Division Counsel was sent to his FCPS email address John.Foster@fcps.edu, and the postal copy was sent to John Foster, Division Counsel, Fairfax County Public Schools Division, 8115 Gatehouse Rd., Falls Church, VA 22042.

Chaim Mandelbaum

Chaim Mandelbaum,
Counsel for [REDACTED]