

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF

FILED
CIVIL INTAKE

2022 MAY 27 P 3: 26

FAIRFAX COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
 v.)
)
 Callie Oettinger)
 REDACTED)
)
 Respondent.)

JOHN T. FREY
 CLERK, CIRCUIT COURT
 2022 MAY 27 10 07 04 6
 Civil Action No.: _____

**PETITION FOR ADDITIONAL TIME TO RESPOND
 TO VIRGINIA FREEDOM OF INFORMATION ACT REQUEST**

COMES NOW Petitioner the Fairfax County School Board (the “School Board”), which operates the Fairfax County Public Schools (“FCPS”), by counsel, and, pursuant to Code of Virginia section 2.2-3704(C), respectfully petitions this Honorable Court for additional time to respond to certain requests for documents submitted by Respondent Callie Oettinger pursuant to the Virginia Freedom of Information Act (“FOIA”). The School Board states the following in support of its Petition.

1. Respondent is a Fairfax County resident who, upon information and belief, resides at 8110 Bellingham Court, Fairfax Station, Virginia 22039.
2. This Court has personal jurisdiction over Respondent pursuant to Code of Virginia section 8.01-328.1(A)(1), given that Respondent lives in Fairfax County, Virginia, and has submitted a request to FCPS under FOIA.
3. On May 10, 2022, Respondent sent by email a request under FOIA for “all of FCPS’s documents and correspondence and any other digital or print records between FCPS and

OCR [the Office of Civil Rights for the United States Department of Education], which relate to the investigation and resolution, specifically for the investigation OCR launched in 2021, when it announced at the same time that it would investigate FCPS and Los Angeles Unified School District.”

4. On May 17, 2022, FCPS responded to Respondent’s request, noted that it had received Respondent’s request on May 10, 2022, and, due to limited staffing and the amount of time that is required to process the request, invoked its right to seven additional working days to respond, as provided by Code of Virginia section 2.2-3704(B)(4).

5. On May 24, 2022, FCPS provided Respondent with an advanced cost estimate, thereby utilizing only five business days of the seven working day extension.

6. On May 26, 2022, FCPS received Respondent’s advanced cost payment.

7. Pursuant to Code of Virginia section 2.2-3704(H), “the period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the cost estimate and the response of the requester.” As such, FCPS’s deadline to respond to Respondent’s request is May 31, 2022.

8. Molly Shannon is the sole FOIA Officer for FCPS, and she began searching for documents potentially responsive to Respondent’s request on May 26, 2022, when Respondent submitted her advanced cost payment. Ms. Shannon’s initial review suggests that Respondent’s request amounts to approximately 620 responsive documents totaling 8,300 pages of material.

9. The process of reviewing thousands of pages of documents is extremely time consuming, especially given that responsive documents are likely to include personally identifiable information protected by the Family Educational Rights and Privacy Act (“FERPA”) that will need to be redacted from any production.

10. Once potentially responsive documents are identified, further review of the documents must be handled through FCPS's Office of Division Counsel to confirm whether particular documents are properly exempted or produced.

11. FCPS has only one full time employee responsible for FOIA requests, and this employee handles roughly 30-35 FOIA requests a month. FCPS currently has 23 other FOIA requests and associated deadlines to meet. Staff members in the Office of Division Counsel have similar obligations.

12. Given the extraordinary volume of records requested by Respondent, which amount to approximately 620 responsive documents totaling approximately 8,300 pages of material, the staffing of one fulltime position in the FCPS FOIA Office, it is not practically possible for FCPS to respond to Respondent's request by May 31, 2022.

13. Given the foregoing, FCPS contacted Respondent and asked if she would agree to FCPS reviewing and providing the 8,300 pages of requested records in four productions to occur on June 3, 2022, June 10, 2022, June 17, 2022, and June 24, 2022.

14. Respondent has refused FCPS's reasonable request stating that "FCPS's staffing issue isn't my problem and isn't a valid reason to waive mandated regulations I want everything now."

15. VFOIA provides, in pertinent part, that

Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

Va. Code § 2.2-3704 (C).

16. Due to the huge volume of potentially responsive documents (over 8,300 pages) and the amount of time required to review, redact, sort, and then produce the requested documents, FCPS simply does not have sufficient employees to produce documents responsive to Respondent's request by the May 31, 2022 deadline.

17. If the FCPS employees responsible for these operations were forced to devote every waking hour to meet Respondent's unreasonable deadline, they could not meet other responsibilities essential to FCPS's operations, and FOIA does not impose a duty upon public bodies to require employees to work overtime, on weekends or holidays, as demanded by Respondent. In contrast, FOIA's compliance deadlines refer to "working days."

18. FCPS has made reasonable efforts to reach an agreement with Respondent concerning the production of records requested, but Respondent has refused the request, stating, "I want everything now."

19. This Court has the authority to grant the request sought by the School Board and, indeed, this Court has done so before in at least one other case.

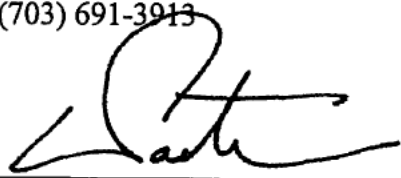
WHEREFORE, for the foregoing reasons, the Fairfax County School Board respectfully requests that this Court enter an order extending the timeline by which FCPS must produce documents requested by Respondent consistent with the deadlines outlined in this Petition. The School Board also requests any further relief that this Court deems just and proper.

Respectfully submitted,

Fairfax County School Board
By Counsel

Date: May 27, 2022

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By: 


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Counsel for Petitioner
Fairfax County School Board

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May 2022, a true copy of the foregoing was sent
by email and mailed, first class, postage prepaid to:

Callie Oettinger
REDACTED

Respondent



William B. Porter