

# MATTHEW D. HARDIN

ATTORNEY-AT-LAW

314 West Grace Street, Suite 304 · Richmond, VA 23220

Phone: (804) 608-6456 · Email: MatthewDHardin@gmail.com · Fax: (877) 310-3847

October 14, 2015

Denise Lunsford  
Albemarle County Commonwealth's Attorney  
410 East High Street  
Charlottesville, Virginia 22902

VIA FAX: 434-972-4093

RE: Freedom of Information Act Request

Ms. Lunsford:

Pursuant to the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 *et seq.* (VFOIA), on behalf of Tyler Pieron, a citizen and resident of the Commonwealth of Virginia, I submit this request pursuant to the Virginia Freedom of Information Act.

Please provide us copies of all records held by the Albemarle County Commonwealth's Attorney's Office, including records held in personal email accounts, and records sent in the form of text messages, which records meet, or contain information meeting, the following descriptions.

- 1) All credit card billing statements received by the Albemarle County Commonwealth's Attorney's Office, whether received directly from a credit card company or indirectly from an employee of the Commonwealth's Attorney's office during the period January 2012 through December 2013, inclusive, or covering any expense or billing in that same period, for credit cards issued to, *or* paid/reimbursed in whole or in part by the Albemarle County Commonwealth's Attorney Office.
- 2) All documents reflecting reimbursements paid to the Albemarle County Commonwealth Attorney for any expenses, which expenses were incurred, or the documents were submitted, between January 2012 until December 2013.
- 3) All emails or text messages the Commonwealth's Attorney sent (whether on personal or official email accounts, while conducting the "business of the Commonwealth"), which include BOTH the phrase "press" and either the word "Jim" or the word "Larkin."

4) All emails or text messages the Commonwealth's Attorney sent (whether on personal or official email accounts, while conducting the "business of the Commonwealth"), during the period January 2012 to December 2013 to or received from the attorney representing James Larkin or which refer to the attorney representing James Larkin.

5) All emails or text messages the Commonwealth's Attorney sent (whether on personal or official email accounts, while conducting the "business of the Commonwealth"), to or received from Chris Dumler.

6) All emails, or texts, the Commonwealth's Attorney sent or received (whether on personal or official email accounts, while conducting the "business of the Commonwealth"), to or from Michael Ducette, which contain the word "Dumler", or the word "Chris".

7) All emails or text messages sent or received (whether on personal or official email accounts, while conducting the "business of the Commonwealth") by Denise Lunsford between January 1, 2012 and May 20, 2012, which discuss work-related travel plans.

8) All emails, sent or received by Denise Lunsford (whether on personal or official email accounts, while conducting the "business of the Commonwealth"), which include the word "drone."

9) All correspondence, including emails, texts, memoranda, etc., sent to or from Courtney Stewart by anyone in the Commonwealth Attorney's Office.

10) All emails or text messages the Commonwealth's Attorney sent or received (whether on personal or official email accounts, while conducting the "business of the Commonwealth"), which reference the Weiner prosecution, particularly, but not limited to, all communications referencing Mark Belew, or which reference Weiner and missing girls.

11) All documents and information which set forth the policies of the Commonwealth's Offices, and the policies of the County of Albermarle regarding the use of work provide computer, work provided cell phones, work provided office phones and all policies and procedures which discuss the personal use of any work provided resources.

Items (1) and (2) cover both bills for credit cards issued to or provided for use by Office of the Commonwealth's Attorney, and billing or expense documents submitted in support of any reimbursement requests made by Denise Lunsford to the Commonwealth Attorney's Office.

Because of the latter, this request also seeks copies of any related reimbursement checks or stubs from the Commonwealth Attorney's Office to Denise Lunsford for those reimbursements.

Please note that Va. Code § 2.2-3704 (B) requires your office to provide a response within five days. Such a response can take several forms:

1) Pursuant to § 2.2-3704 (B)(1), you can withhold all responsive records, but only if you “identify with reasonable particularity **the volume** and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.”

2) Pursuant to § 2.2-3704 (B)(2), you can provide the records in part and withhold them in part, but only if you “identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.”

3) Pursuant to Va. Code § 2.2-3704(B)(3), you can claim that no records exist.

4) Pursuant to Va. Code 2.2-3704(B)(4), you can claim an extra seven days are needed to make one of the responses delineated in ##1-3, above.

I have been informed lately that certain public bodies have adopted a practice of requiring payment of fees merely to conduct an initial canvass to obtain the estimate of potentially responsive records. This has the appearance of using fees as a barrier. As a result I note that Va. Code 2.2-3704(F) allows a public body to “make reasonable charges not to exceed its *actual cost incurred* in accessing, duplicating, supplying, or searching for the requested records.” The statute does not allow a public body to demand payment as a condition precedent to asserting what records exist but might be withheld under some claim of privilege pursuant to Va. Code § 2.2-3704 (B)(1). Any such charge, without having first conducted an initial canvass to estimate obtain a basis for such estimate would of course be arbitrary as it inherently lacks a foundation.

I also note that VFOIA requires proper searches and responses, meaning that searches and responses be conducted free from conflict of interest. If presented by an itemized invoice from your office setting forth the expenses it expects to incur to fulfill this FOIA request, I am willing to authorize \$1000 to ensure my access to the information set forth above. If the amount will be above this, please inform me.

Please feel free to contact me with any questions. I can be reached by phone at 804-608-6456 or by email at [matthewdhardin@gmail.com](mailto:matthewdhardin@gmail.com).

Regards,

A handwritten signature in black ink that reads "Matthew D. Hardin". The signature is written in a cursive style with some loops and flourishes.

Matthew D. Hardin