

VIRGINIA:

**IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND**

ANIMAL PARTISAN )  
)  
Petitioner, )  
)  
v. )  
)  
VIRGINIA COMMONWEALTH UNIVERSITY )  
and THE COMMONWEALTH TIMES )  
)  
)  
Respondents. )

No. [CASE NUMBER] *CC22-4629.1*

RECEIVED AND FILED  
CIRCUIT COURT  
OCT 20 2022 *21*  
EDWARD F. JEWETT, CLERK  
BY *[Signature]* D.C.

## **PETITION FOR WRIT OF MANDAMUS**

### **Preliminary Statement**

Petitioner, Animal Partisan, petitions this Court for the issuance of a writ of mandamus and for other relief pursuant to Va. Code Ann. § 2.2-3713 to require Respondents to comply with the provisions of Va. Code Ann. § 2.2-3700 *et seq.* and in support thereof states:

1. This is an action under the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 *et seq.* (“VFOIA”) seeking declaratory, mandamus, and injunctive relief against Virginia Commonwealth University (“VCU”) and The Commonwealth Times (“CT”) for failure to respond to multiple requests for public records as required by law.

2. As described herein, Petitioner has submitted three requests for public records maintained by Respondents, each of which has been denied or ignored

### **JURISDICTION AND VENUE**

3. This Court has personal jurisdiction over this matter pursuant to Virginia Code § 2.2-3713(A)(3).

4. This Court has subject matter jurisdiction over this matter pursuant to Virginia Code § 2.2-3713(A)(3).

5. This Court is the proper venue for this matter pursuant to Virginia Code § 2.2-3713(A)(3).

### **PARTIES**

2. Petitioner, Animal Partisan (“AP”), is a Virginia non-stock corporation with a physical address in Glen Allen, Virginia. Petitioner’s mission is to end the suffering of animals in slaughterhouses, farms, and laboratories by discovering, exposing, and challenging unlawful

conduct. Petitioner was formerly known as Exposing Animal Research in Richmond (“EARR”), its name at the time of the interactions described below.

3. Respondent, Virginia Commonwealth University (“VCU”) is a public university located in Richmond, Virginia.

4. Respondent, The Commonwealth Times (“CT”), is VCU’s student-run newspaper that operates “under the guidance of the VCU Student Media Center director and governance of the VCU Student Media Board”.<sup>1</sup>

### **LEGAL FRAMEWORK**

5. VFOIA defines “public records” as “all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.” Virginia Code § 2.2–3701.

6. VFOIA provides that “all public records shall be available for inspection and copying upon request” unless “a public body or its officers or employees specifically elect to exercise an exemption provided by [VFOIA] or any other statute.” Virginia Code § 2.2–3700(B).

7. VFOIA provides that “[a]ll public records . . . shall be presumed open, unless an exemption is properly invoked.” *Ibid.*

---

<sup>1</sup> *About Us*, THE COMMONWEALTH TIMES, <https://commonwealthtimes.org/about-us/about-us-2/> (last visited Oct. 12, 2022).

8. VFOIA provides that its provisions “shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government” and that “[a]ny exemption from public access to records . . . shall be narrowly construed and no record shall be withheld . . . unless specifically made exempt pursuant to [VFOIA] or other specific provision of law.” *Ibid.*

9. VFOIA provides that “[e]xcept as otherwise specifically provided by law, all public records shall be open to citizens of the Commonwealth . . . during the regular office hours of the custodian of such records. Access to such records shall be provided by the custodian in accordance with [VFOIA] by inspection or by providing copies of the requested records, at the option of the requester. . . .” Virginia Code § 2.2–3704(A).

10. VFOIA provides that “[a]ny public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester” or provide another statutorily enumerated response. Virginia Code § 2.2–3704(B).

11. VFOIA requires that a public body inform a requester in writing when public records are being entirely withheld and to “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.” Virginia Code § 2.2–3704(B)(1).

12. VFOIA prohibits a public body from “withhold[ing] a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by this chapter or by any other provision of law.” Virginia Code § 2.2–3704.01. VFOIA provides that “[a] public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under this chapter or other provision of law applies to the entire content of the



public record. Otherwise, only those portions of the public record containing information subject to an exclusion under this chapter or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed.” Virginia Code § 2.2-3704.01.

**FACTS GIVING RISE TO PETITIONER’S CAUSE OF ACTION**

13. On August 31, 2021, Petitioner signed a contract with VCU’s Student Media Center to run an advertisement on three social media platforms operated by CT for a cost of \$60.00.

14. Petitioner submitted the proposed advertisement to the CT on September 6, 2021. The advertisement contained an illustration and message that was critical of VCU’s primate research program.

15. On September 13, 2021, CT responded to Petitioner and advised that it had decided not to run the advertisement as it was deemed “insensitive and too explicit for their audience.”

16. Petitioner promptly requested clarification on the reason for denial and CT responded on September 13, 2021, advising that the advertisement was “inappropriate” for the audience and was considered “graphic . . . explicit and insensitive.”

17. On November 18, 2021, Petitioner sent a revised advertising image to the CT and inquired if it would be accepted for publication.

18. On January 7, 2022, after multiple inquiries from Petitioner seeking a response, the CT responded and advised that the revised image had also been declined. No further reason was provided.

19. On January 12, 2022, Petitioner submitted a written VFOIA request to VCU FOIA Officer, Michele Howell, requesting copies of public records in the possession VCU

related to: (a) requests by Petitioner to run advertising in the CT, (b) requests from other parties to advertise that were declined because they were deemed “graphic,” “insensitive,” or “explicit,” and (c) changes made to advertising policies in the VCU Student Media Center Spring 2022 Media Kit.<sup>2</sup>

20. On January 21, 2022, VCU, through Howell, responded and provided responsive records in the possession of VCU. However, VCU declined to provide records in the possession of CT, stating that “The Commonwealth Times is an independent student organization recognized by the university and as such VCU is not the custodian of its records.”<sup>3</sup>

21. Petitioner submitted a VFOIA request directly to the CT on January 21, 2022, directing the request to its Editor, Katherine DeRosa, as no VFOIA contact could be located. The request sought records in the possession of CT pertaining to (a) requests by Petitioner to run advertising in the CT and (b) requests from other parties to advertise in the CT that were declined because they were deemed “graphic,” “insensitive”, or “explicit.”<sup>4</sup>

22. On February 5, 2022, having received no response from CT, Petitioner again contacted DeRosa via email and copied the CT’s Managing Editor at the time, Grace McOmber, renewing the request for these records.<sup>5</sup>

23. As of the date of this filing, over 8 months later, CT has never acknowledged or responded to these requests nor has VCU independently provided these records.

## **COUNT I**

### **Violation of the Virginia Freedom of Information Act**

16. Plaintiff incorporates paragraphs 1-23 herein by reference.

---

<sup>2</sup> See Appendix A.

<sup>3</sup> See Appendix B.

<sup>4</sup> See Appendix C.

<sup>5</sup> See Appendix D.

17. VFOIA “ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees . . . .” Virginia Code § 2.2-3700(B),

18. VFOIA, provides that “all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records,” unless such public record is subject to a statutory exemption. Va. Code Ann. § 2.2-3704(A),

19. Under the VFOIA, the custodian of the requested public records must respond to the request “within five working days of receiving a request” by providing the requested records or by detailing in writing why such records are exempt from public disclosure or otherwise are not being provided within the five-day period. Virginia Code § 2.2-3704(B).

20. VFOIA provides that “[a]ny failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.” Code § 2.2-3713(E).

21. VFOIA defines a “public body” as “any legislative body, authority, board, bureau, commission, district, or agency of the Commonwealth or of any political subdivision of the Commonwealth, including counties, cities, and towns, municipal councils, governing bodies of counties, school boards, and planning commissions; governing boards of public institutions of higher education; and other organizations, corporations, or agencies in the Commonwealth supported wholly or principally by public funds.” Virginia Code § 2.2-3701.

22. VFOIA’s definition of a “public body” also includes “any committee, subcommittee, or other entity however designated of the public body created to perform delegated functions of the public body or to advise the public body.” Virginia Code § 2.2-3701.

23. VCU is a public institution of higher education and is therefore a “public body” subject to VFOIA. Virginia Code § 2.2-3701.

24. CT is an “entity” designated by VCU and “delegated” specific functions and is therefore a “public body” subject to VFOIA. Virginia Code § 2.2-3701. VCU has delegated CT the functions of “provid[ing] hands-on training in journalism, multimedia production, photography, marketing and human resources, among other areas.”<sup>6</sup>

25. CT is an “other organization . . . in the Commonwealth supported wholly or principally” by VCU’s public funds and is therefore a “public body” subject to VFOIA. Virginia Code § 2.2-3701. VCU provides office space for the CT within VCU’s Student Media Center located at 817 West Broad Street, Richmond, Virginia 23284.<sup>7</sup> VCU provides funding for the CT through its mandatory activity fee.<sup>8</sup> VCU provides leadership, governance, and guidance for the CT through the VCU Student Media Center Director and the VCU Student Media Board.<sup>9</sup> VCU provides CT with professional staff members, adjunct advisers, hourly student support staff, graphic design services, advertising sales oversight, media/skill training, space management, human resource support, and fiscal support.<sup>10</sup>

23. VCU violated VFOIA by failing to provide public records belonging to its designated entity within five working days of receiving Petitioner’s request or “identify[ing] with reasonable particularity the volume and subject matter of withheld records, and cite, as to

---

<sup>6</sup> *About the CT, VCU Student Media Center*, VIRGINIA COMMONWEALTH UNIVERSITY, <https://studentmedia.vcu.edu/student-media/the-commonwealth-times/> (last visited Oct. 13, 2022).

<sup>7</sup> *Student Media Center*, VIRGINIA COMMONWEALTH UNIVERSITY, <https://maps.vcu.edu/monroepark/817wbroad/index.html> (last visited Oct. 13, 2022).

<sup>8</sup> *About Us, The Commonwealth Times*, <https://commonwealthtimes.org/about-us/about-us-2/> (last visited Oct. 12, 2022); *About SMC, VCU Student Media Center*, VIRGINIA COMMONWEALTH UNIVERSITY, <https://studentmedia.vcu.edu/about/> (last visited Oct. 12, 2022).

<sup>9</sup> *About the CT, VCU Student Media Center*, VIRGINIA COMMONWEALTH UNIVERSITY, <https://studentmedia.vcu.edu/student-media/the-commonwealth-times/> (last visited Oct. 13, 2022).

<sup>10</sup> *About SMC, VCU Student Media Center*, VIRGINIA COMMONWEALTH UNIVERSITY, <https://studentmedia.vcu.edu/about/> (last visited Oct. 12, 2022).



each category of withheld records, the specific Code section that authorizes the withholding of the records.”. Virginia Code § 2.2-3704(B).

23. CT violated VFOIA by failing to provide public records within five working days of receiving Petitioner’s request or “identify[ing] 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.” Virginia Code § 2.2-3704(B). VFOIA provides that a “failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation.” Virginia Code § 2.2-3704(E).

24. Petitioner has no other adequate legal remedy.

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

1. Issue a writ of mandamus to compel Respondents to comply fully and without further delay with VFOIA and to furnish Petitioner all non-exempt public documents meeting the description in its requests;

2. Enter an injunction directing that, because Respondent’s delay in complying with its obligations under VFOIA was without substantial justification, Respondents must waive all fees associated with Petitioner’s requests;

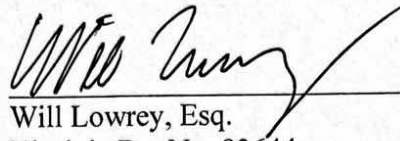
3. Award Petitioner reasonable costs and attorneys’ fees, as authorized by Virginia Code § 2.2-3713(D);

9. Enter a civil penalty against Respondents for willfully and knowingly violating VFOIA, pursuant to Virginia Code § 2.2-3714; and

10. Order such additional relief as the Court may deem just and proper.

DATED this the 14 day of October 2022.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Will Lowrey", written over a horizontal line.

Will Lowrey, Esq.  
Virginia Bar No. 93644  
Animal Partisan  
11357 Nuckols Road, #138  
Glen Allen, Virginia 23059  
(804) 307-4102  
wlowrey@animalpartisan.org

**AFFIDAVIT**

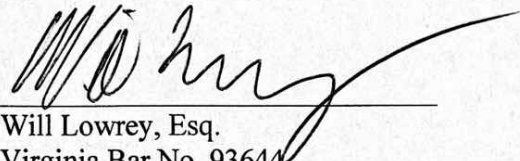
VIRGINIA:

Will Lowrey, being duly sworn, states under penalty of perjury that the following is true:

1. I am Legal Counsel for Animal Partisan. I make this affidavit to show good cause pursuant to Virginia Code § 2.2-3713(A).

2. I have read the attached petition and know its contents.

3. The statements in the petition are true to my own knowledge, or upon information and belief. As to those statements that are based on information and belief, I believe those statements to be true.



Will Lowrey, Esq.  
Virginia Bar No. 93644  
Animal Partisan  
11357 Nuckols Road, #138  
Glen Allen, Virginia 23059  
(804) 307-4102  
wlowrey@animalpartisan.org

Sworn before me this:

14 day of October, 2022



NOTARY PUBLIC

