

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

NATALIE JACOBSEN and JACKSON
LANDERS,

Petitioners,

v.

CITY OF CHARLOTTESVILLE

Serve:

S. Craig Brown, City Attorney
Office of the City Attorney
605 East Main Street
Charlottesville, VA 22902

DEPARTMENT OF STATE POLICE

Serve:

Colonel W. Steven Flaherty
7700 Midlothian Turnpike
North Chesterfield, VA 23235

OFFICE OF THE SECRETARY OF
PUBLIC SAFETY AND HOMELAND
SECURITY

Serve:

Brian Moran
Patrick Henry Building
1111 East Broad Street
Richmond, VA 23219

Respondents.

Case No.: CL17-592

FILED
Main @ 12:05 p
(Date & Time)
City of Charlottesville
Circuit Court Clerk's Office
Keshelle A. Dugger, Clerk
By  Deputy Clerk

FIRST AMENDED PETITION FOR WRIT OF MANDAMUS

Petitioners Natalie Jacobsen and Jackson Landers (collectively, "Petitioners"), by and through their undersigned counsel, petition this Court for the issuance of a writ of mandamus and for other relief pursuant to Virginia Code § 2.2-3713 to require the City of Charlottesville, Department of State Police, and Office of the Secretary of Public Safety and Homeland Security

(collectively, “Respondents”) to comply with the provisions of the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 *et seq.*, and in support thereof state:

1. This is an action under the Virginia Freedom of Information Act, Virginia Code § 2.2–3700 *et seq.* (“FOIA” or “the Act”).

2. As described herein, Petitioners have filed three public records requests with Respondents under FOIA: one to the City of Charlottesville, one to the Department of State Police, and one to the Office of the Secretary of Public Safety and Homeland Security. Respondents have failed to provide Petitioners with the public records Petitioners requested in response to Petitioners’ FOIA requests.

JURISDICTION AND VENUE

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

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

5. This Court is the proper venue for this matter pursuant to Virginia Code § 2.2–3713(A)(1) because Respondent the City of Charlottesville is a local public body elected or appointed to serve in Charlottesville, Virginia, and Petitioners’ rights and privileges were denied in Charlottesville, Virginia.

6. This Court is the proper venue for this matter pursuant to Virginia Code § 2.2–3713(A)(3) because Respondents the Department of State Police and Office the Secretary of Public Safety and Homeland Security are boards, bureaus, commissions, authorities, districts, institutions, or agencies of the state government and Petitioner Natalie Jacobsen is a resident of Charlottesville, Virginia.

PARTIES

7. Petitioners are citizens of the Commonwealth of Virginia. Petitioner Natalie Jacobsen is a resident of Charlottesville, Virginia. Petitioner Jackson Landers is a resident of Albemarle County, Virginia.

8. Petitioners are freelance journalists. Petitioner Natalie Jacobsen's work has appeared in publications such as C-Ville Weekly, The Oregonian, and Tokyo Weekender. Petitioner Jackson Landers' work has appeared in publications such as The Washington Post, Smithsonian, and The Daily Beast.

9. Respondent the City of Charlottesville is a local public body. The Charlottesville Police Department is an authority, agency, or department of the City of Charlottesville established by Chapter 20, Police, of the Code of Ordinances of Charlottesville, Virginia.

10. Respondent Department of State Police (the "Virginia State Police") is a board, bureau, commission, authority, district, institution, or agency of the state government.

11. Respondent the Office of the Secretary of Public Safety and Homeland Security is a board, bureau, commission, authority, district, institution, or agency of the state government.

12. Respondents are public bodies of the Commonwealth of Virginia and are therefore governed by the disclosure requirements of FOIA. Virginia Code §§ 2.2-3700, 2.2-3701.

13. Respondents are the legal custodians of the public records Petitioners seek.

THE VIRGINIA FREEDOM OF INFORMATION ACT

14. FOIA 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.

15. FOIA 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 [FOIA] or any other statute[.]” Virginia Code § 2.2–3700(B).

16. FOIA provides that “[a]ll public records . . . shall be presumed open, unless an exemption is properly invoked.” Virginia Code § 2.2–3700(B).

17. FOIA 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 [FOIA] or other specific provision of law.” Virginia Code § 2.2–3700(B). FOIA further provides that its provisions “shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.” *Id.*

18. FOIA 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 [FOIA] by inspection or by providing copies of the requested records, at the option of the requester. . . .” Virginia Code § 2.2–3704(A).

19. FOIA 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).

20. FOIA 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. FOIA 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.

21. FOIA provides that “[r]ecords of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public” are “excluded from the mandatory disclosure provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law[.]” Virginia Code § 2.2–3706(A)(2)(e).

22. FOIA provides that “[w]orking papers and correspondence of the Office of the Governor, the Lieutenant Governor, or the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates or the Senate of Virginia; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of

higher education in the Commonwealth” are excluded from the mandatory disclosure provisions of FOIA. Virginia Code § 2.2–3705.7(2) (the “Working Papers Exclusion”). FOIA defines “Office of the Governor” as “the Governor; the Governor’s chief of staff, counsel, director of policy, and Cabinet Secretaries; the Assistant to the Governor for Intergovernmental Affairs; and those individuals to whom the Governor has delegated his authority pursuant to [Virginia Code] § 2.2-104.” *Id.* FOIA defines “working papers” as “those records prepared by or for a public official identified in this subdivision for his personal or deliberative use.” *Id.*

23. FOIA provides that “no information that is otherwise open to inspection under [FOIA] shall be deemed excluded by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence” and that “information publicly available or not otherwise subject to an exclusion under this chapter or other provision of law that has been aggregated, combined, or changed in format without substantive analysis or revision shall not be deemed working papers.” Virginia Code § 2.2–3705.7(2).

24. The Circuit Court of Virginia, Fairfax County, has held that the Working Papers Exclusion does not apply to public records merely because they are received or read by a public official identified in Virginia Code § 2.2–3705.7(2). *Hill v. Fairfax Cty. Sch. Bd.*, 83 Va. Cir. 172 (2011).

25. According to an opinion of the Virginia Attorney General interpreting Virginia Code § 2.1–342(b)(4), the predecessor statute to Virginia Code § 2.2–3705.7(2), the FOIA exclusion for working papers of the Office of the Governor “does not apply to similar records held by others outside of the Office of the Governor.” 1983–84 Op. Atty. Gen. 447.

26. Opinions of the Virginia Attorney General interpreting Virginia Code § 2.1–342(b)(4), the predecessor statute to Virginia Code § 2.2–3705.7(2), concluded that the Working

Papers Exclusion does not apply to records that are disseminated or distributed to others beyond the public official identified in the Working Papers Exclusion. *See* 1976-77 Op. Atty. Gen. 315; 1981-82 Op. Atty. Gen. 438; 1982-83 Opp. Atty. Gen. 724.

27. According to an opinion of the Virginia Freedom of Information Advisory Council (the “Council”), the Working Papers Exclusion does not apply to a working paper of the Office of the Governor once it is disseminated to others outside the Office of the Governor. Freedom of Information Advisory Opinion 1 (2016).

28. FOIA expressly provides that information excluded under Virginia Code § 2.2-3705.7 from a public record shall be redacted in accordance with Virginia Code § 2.2-3704.01. Virginia Code § 2.2-3705.7.

29. FOIA provides that “[a] single instance of denial of the rights and privileges conferred by [FOIA] shall be sufficient to invoke the remedies granted herein.” Virginia Code § 2.2-3713(D).

30. FOIA provides that a petitioner is “entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys’ fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust.” Virginia Code § 2.2-3713(D).

THE VIRGINIA FUSION INTELLIGENCE CENTER

31. Virginia Code § 52-47 establishes the Virginia Fusion Intelligence Center, the purpose of which is “to receive and integrate terrorist-related intelligence and information.” The Virginia Fusion Intelligence Center is operated by the Department of State Police. Virginia Code § 52-47.

32. Virginia Code § 52–48(A) provides that “[p]apers, records, documents, reports, materials, databases, or other evidence or information relative to criminal intelligence or any terrorism investigation in the possession of the Virginia Fusion Intelligence Center shall be confidential and shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) or the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.).”

FACTS GIVING RISE TO PETITIONERS’ CAUSE OF ACTION

33. On August 12, 2017, a rally by white nationalists and neo-Nazis was held in Charlottesville, Virginia, commonly known as the “Unite the Right” rally.

34. In advance of the Unite the Right rally, the City of Charlottesville and/or the Charlottesville Police Department released a press release announcing that the Charlottesville Police Department “and their law enforcement partners, primarily the Virginia State Police, [would] have a visible presence in the City over the weekend” News & Press Releases, *Information for August 12* (August 9, 2017), available at <https://perma.cc/372Y-8W7Y>. The press release stated: “These law enforcement agencies have been working together in preparation for the August 12 event.” *Id.*

35. On the morning of August 12, 2017, protesters and counter-protesters began gathering in Charlottesville. See Joe Heim, *Recounting a day of rage, hate, violence and death*, Wash. Post (Aug. 14, 2017), available at <https://perma.cc/2H5E-ARB6>. Officers from both the Virginia State Police and Charlottesville Police Department were stationed at or around Emancipation Park in Charlottesville, the planned site of the rally. *Id.*

36. Before the rally was scheduled to begin, violent clashes broke out between protesters and counter-protesters. *Id.* Three people were arrested in connection with the skirmishes. Sheryl Gay Stolberg & Brian M. Rosenthal, *Man Charged After White Nationalist*

Rally in Charlottesville Ends in Deadly Violence, N.Y. Times (Aug. 12, 2017),
<https://nyti.ms/2vs7HWI>.

37. Shortly thereafter, police declared the rally an unlawful assembly. *Id.* Around 11 a.m., the City of Charlottesville declared a local state of emergency. *Id.* Approximately one hour later, Virginia Governor Terry McAuliffe declared a state of emergency. *Id.*

38. On the afternoon of August 12, 2017, a car drove into a crowd of counter-protesters at Water Street East and 4th Street Southeast in Charlottesville. Heim, *supra*. At least 19 people were injured, and one person, Heather Heyer, was killed. *Id.* The driver of the car, James Alex Fields Jr., was later arrested. *Id.*

39. Later that day, one of the Virginia State Police helicopters monitoring the Unite the Right rally crashed. *Id.* Two Virginia state troopers, Lt. H. Jay Cullen and Berke M.M. Bates, died in the crash. *Id.*

40. According to Charlottesville Police Chief Al Thomas, as of late afternoon on August 12, 2017, at least 35 people had been treated by city personnel for injuries that ranged from life-threatening to minor. Priscilla Alvarez, *Car Strikes Charlottesville Crowd, 1 Dead*, Atlantic (Aug. 12, 2017), *available at* <https://perma.cc/7NG5-WKJU>. Thomas stated that “[f]ourteen people have been treated for injuries resulting from individual engagements, [and] non-pedestrians were treated for injuries in a three-vehicle crash at the intersection of [F]ourth [S]treet and [W]ater [S]treet here in downtown Charlottesville.” *Id.*

41. The public has a strong and legitimate interest in the plans that law enforcement made in anticipation of the Unite the Right rally, which ended in violence and deaths. The events of August 12, 2017, in Charlottesville, Virginia, and their traumatic effect on the community and the country have been widely reported on by the local and national news media.

42. Accordingly, following the Unite the Right rally, Petitioners made public records requests seeking information about law enforcement safety plans for the Unite the Right rally in order to inform the public, through their reporting, about how law enforcement prepared for what became a tragic event for the city.

THE FIRST FOIA REQUEST

43. On August 15, 2017, Petitioner Jackson Landers submitted a FOIA request (the “First FOIA Request”) to the City of Charlottesville via email to Miriam Dickler, the Director of Communications for the City of Charlottesville. The First FOIA Request sought “a copy of the [Charlottesville Police Department’s] Safety Plan that was used for the rally on Saturday[.]” Exhibit 1.

44. On August 22, 2017, Lieutenant C.S Sandridge of the Charlottesville Police Department responded to the First FOIA Request. Exhibit 2. The response stated: “The ‘safety plan’ was the operation plan for the event. Documents and plans related to the protest are tactical plans and pursuant to Va. Code § 2.2-3706(A)(2)(e), are exempt from disclosure.” *Id.*

THE SECOND FOIA REQUEST

45. On September 18, 2017, Petitioner Natalie Jacobsen submitted a FOIA request (the “Second FOIA Request”) to the Virginia State Police that sought “the Operational Plan that was devised, authored, and approved by Governor McAuliffe prior to the [August 12, 2017 ‘Unite the Right’] rally.” Exhibit 3.

46. On September 19, 2017, First Sergeant David L. Ostwinkle of the Virginia State Police responded to the Second FOIA Request. Exhibit 4. The response stated: “The materials you are requesting are law-enforcement ‘records contain[ing] specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the

general public’ and are being withheld under § 2.2-3706(A)(2)(e). Additionally, the records may contain criminal intelligence and are governed by specific statutory authority and are excluded from the provisions of FOIA pursuant to § 52.48[.]” *Id.*

THE THIRD FOIA REQUEST

47. On October 3, 2017, Petitioner Natalie Jacobsen submitted a FOIA Request (the “Third FOIA Request”) via an email form to the Office of the Secretary of Public Safety and Homeland Security. The Third FOIA Request stated:

I am a freelance journalist and resident of Charlottesville Virginia.

This is a Virginia Freedom of Information Act (VA FOIA) request to the Office of the Secretary of Public Safety and Homeland Security. I am writing to request the safety plan or “Operations Plan” for the “Unite the Right” rally on August 12, 2017 in Charlottesville, Virginia.

If some portion of the records I have requested is excluded from disclosure by the VA FOIA or another provision of law, Virginia Code § 2.2-3704.01 requires that you withhold only those portions of the record containing information subject to an exclusion. All portions of the record that are not subject to an exclusion must be disclosed.

I request that the records be provided in electronic format, such as a PDF.

I look forward to your response within five working days, as required by VA FOIA.

48. On October 11, 2017, Noah P. Sullivan, Counsel to Governor McAuliffe, responded to the Third FOIA Request. Exhibit 5. The response stated: “The records you request are exempt as working papers of the Office of the Governor (Va. Code § 2.2-3705.7(2)), as well as law enforcement-sensitive information (Va. Code § 2.2-3706). We therefore will be denying your request.” *Id.*

FIRST CAUSE OF ACTION:
VIOLATION OF THE VIRGINIA FREEDOM OF INFORMATION ACT
BY FAILURE TO PRODUCE RECORDS RESPONSIVE TO
THE FIRST AND SECOND FOIA REQUESTS
(As to Respondents the City of Charlottesville and Virginia State Police)

49. Petitioners reassert and adopt by reference paragraphs 1–48.

50. Respondents the City of Charlottesville and Virginia State Police have failed to provide Petitioners with access to public records in response to the First and Second FOIA Requests.

51. In refusing to provide the requested public records to Petitioners in response to the First and Second FOIA Requests, Respondents the City of Charlottesville and Virginia State Police have relied on Virginia Code § 2.2–3706(A)(2)(e). However, this exclusion is inapplicable to the requested public records. Respondents the City of Charlottesville and Virginia State Police have failed to show that the requested public records contain “specific tactical plans” or that the disclosure of the requested public records “would jeopardize the safety or security of law-enforcement personnel or the general public.” Virginia Code § 2.2–3706(A)(2)(e).

52. In refusing to provide the requested public records to Petitioners in response to the Second FOIA Request, Respondent Virginia State Police has also relied on Virginia Code § 52–48. However, this statutory provision is inapplicable to the requested public records. Respondent Virginia State Police has failed to show that the requested public records contain “information relative to criminal intelligence” or that they are “in the possession of the Virginia Fusion Intelligence Center.” Virginia Code § 52–48.

53. Respondents the City of Charlottesville and Virginia State Police's failure to provide Petitioners with the records responsive to the First and Second FOIA Requests violates Virginia Code §§ 2.2-3704(A) and 2.2-3700(B).

SECOND CAUSE OF ACTION:
VIOLATION OF THE VIRGINIA FREEDOM OF INFORMATION ACT
BY FAILURE TO PRODUCE RECORDS RESPONSIVE TO
THE THIRD FOIA REQUEST
(As to Respondent Office of the Secretary of Public Safety and Homeland Security)

54. Petitioners reassert and adopt by reference paragraphs 1–48.

55. Respondent the Office of the Secretary of Public Safety and Homeland Security has failed to provide Petitioner Natalie Jacobsen with access to public records in response to the Third FOIA Request.

56. In refusing to provide the requested public records to Petitioner Natalie Jacobsen in response to the Third FOIA Request, Respondent the Office of the Secretary of Public Safety and Homeland Security stated that the requested records are exempt as working papers of the Office of the Governor pursuant to Virginia Code § 2.2-3705.7(2). However, this statutory provision is inapplicable to the requested public records.

57. Respondent the Office of the Secretary of Public Safety has failed to demonstrate that the requested records were prepared “by or for” the Office of the Governor for the Office of the Governor’s “personal or deliberative use.” Virginia Code § 2.2–3705.7(2). Accordingly, Respondent the Office of the Secretary of Public Safety has failed to demonstrate that the requested records are “working papers” as defined by FOIA. *See id.*

58. In addition, the requested records have been disseminated beyond the Office of the Governor. Accordingly, Virginia Code § 2.2–3705.7(2) does not apply to the requested

records. *See* 1976-77 Op. Atty. Gen. 315; 1981-82 Op. Atty. Gen. 438; 1982-83 Va. Opp. Atty. Gen. 724; 1983-84 Op. Atty. Gen. 447; Freedom of Information Advisory Opinion 1 (2016).

59. In refusing to provide the requested public records to Petitioner Natalie Jacobsen in response to the Third FOIA Request, Respondent the Office of the Secretary of Public Safety and Homeland Security stated that the requested records are exempt as “law-enforcement sensitive information” pursuant to Virginia Code § 2.2-3706. Virginia Code § 2.2-3706 contains no exemption for “law-enforcement sensitive information.”

60. Respondent the Office of the Secretary of Public Safety and Homeland Security’s failure to provide Petitioner Natalie Jacobsen with the records responsive to the Third FOIA Request violates Virginia Code §§ 2.2-3704(A) and 2.2-3700(B).

THIRD CAUSE OF ACTION:
VIOLATION OF THE VIRGINIA FREEDOM OF INFORMATION ACT
BY FAILURE TO REDACT
(As to All Respondents)

61. Petitioners reassert and adopt by reference paragraphs 1-48.

62. Respondents withheld public records in their entirety in response to Petitioners’ First, Second, and Third FOIA requests.

63. Assuming *arguendo* that some portion of the requested public records are excluded from disclosure, Respondents have violated FOIA by failing to withhold only those portions of the requested public records containing information subject to statutory exclusions and by failing disclosing all portions of the requested public records that are not so excluded. Virginia Code § 2.2-3704.1.

PRAYER FOR RELIEF

Wherefore, Petitioners pray that this Court will:

1. Order Respondents to produce the records responsive to Petitioners' First, Second, and Third FOIA Requests to this Court for *in camera* review.
2. Issue a writ of mandamus ordering Respondents to produce to Petitioners all records responsive to Petitioners' First, Second and Third FOIA Requests.
3. Order Respondents to pay Petitioners' costs, including costs and reasonable fees for expert witnesses, if any, and attorneys' fees. *See* Virginia Code § 2.2-3713(D).
4. Grant any such further relief as this Court deems just and proper.

Respectfully submitted,

NATALIE JACOBSEN and
JACKSON LANDERS

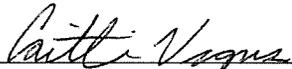
By: 
Caitlin Vogus (VSB # 81054)
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1250
Washington, DC 20005
Tel: (202) 795-9300
Fax: (202) 795-9310
cvogus@rcfp.org

EXHIBIT 1



Jackson Landers <jack.landiers@gmail.com>

FOIA request

Jackson Landers <jack.landiers@gmail.com>

Tue, Aug 15, 2017 at 4:50 PM

To: "Dickler, Miriam" <dickler@charlottesville.org>

Hi, Miriam. I am so sorry to do anything to create more work for you during what is surely the toughest week of your professional life. Could you please send me a copy of the CPD's Safety Plan that was used for the rally on Saturday?

Thanks,

-Jackson Landers

EXHIBIT 2



Jackson Landers <jack.landern@gmail.com>

FOIA request

Sandridge, Cheryl <sandridge@charlottesville.org>

Tue, Aug 22, 2017 at 1:20 PM

To: "Jack.landern@gmail.com" <Jack.landern@gmail.com>

Cc: "Gore, Andrew" <gorea@charlottesville.org>, "Dickler, Miriam" <dickler@charlottesville.org>

Mr. Landers,

The "safety plan" was the operation plan for the event. Documents and plans related to the protest are tactical plans and pursuant to Va. Code § 2.2-3706(A)(2)(e), are exempt from disclosure.

This FOIA matter is considered closed. Please feel free to contact me if you have additional questions or concerns.

Sincerely,

Lieutenant C. S. Sandridge

Professional Standards Unit

Office of Internal Affairs

Charlottesville Police Department

sandridge@charlottesville.org

434-970-3600

From: Jackson Landers**Sent:** Tuesday, August 15, 2017 4:50:55 PM**To:** Dickler, Miriam**Subject:** FOIA request

Hi, Miriam. I am so sorry to do anything to create more work for you during what is surely the toughest week of your professional life. Could you please send me a copy of the CPD's Safety Plan that was used for the rally on Saturday?

Thanks,

-Jackson Landers

EXHIBIT 3

Subject: FOIA Request, Charlottesville

From: najacobsen@yahoo.com

To: foia@vsp.virginia.gov

Date: Monday, September 18, 2017, 4:47:16 PM EDT

To Whom it May Concern,

Thank you for your attention. I'm Natalie Jacobsen, a resident of Charlottesville, and associate with C-Ville Weekly and I am trying to accurately depict police response on August 12th to the planned Unite The Right rally. To do so, without speculation, I would like to submit a FOIA request to look over the Operational Plan that was devised, authored, and approved by Governor McAuliffe prior to the rally.

In this request, Va. Code Ann. § 52-48 should not apply, as the State already has jurisdiction over being able to withhold or strike certain information when revealing it to a media authority or civilian.

I understand there may be some concerns under Va. Code Ann. § 2.2-3706(2), but due to this Operational Plan be regarding a past event, in a contained situation, that does not effect or relate to other upcoming events, using this to create an exception for this plan should be moot.

I am hoping to have a response by: September 20th, 2017, regarding the release of information, and for the information to be prepared and released by: September 22nd, 2017. I do have a budget of up to \$0.05 per page, should it need to be printed and faxed or mailed. I may also arrange to pick it up in person at an appropriate office.

If an officer or PR representative would like to speak to me directly about my request, please feel free to reach out to me at: 434-228-8789.

Thank you very much for any information you can provide.

Cheers,
Natalie

EXHIBIT 4

Subject: RE: FOIA Request, Charlottesville

From: david.ostwinkle@vsp.virginia.gov

To: najacobsen@yahoo.com

Date: Tuesday, September 19, 2017, 4:49:02 PM EDT

Dear Natalie,

The materials you are requesting are law-enforcement "records contain[ing] specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public" and are being withheld under § 2.2-3706 (A)(2)(e). Additionally, the records may contain criminal intelligence and are governed by specific statutory authority and are excluded from the provisions of FOIA pursuant to § 52.48

From: Natalie Jacobsen [mailto:najacobsen@yahoo.com]

Sent: Monday, September 18, 2017 4:47 PM

To: FOIA

Subject: FOIA Request, Charlottesville

To Whom it May Concern,

Thank you for your attention. I'm Natalie Jacobsen, a resident of Charlottesville, and associate with C-Ville Weekly and I am trying to accurately depict police response on August 12th to the planned Unite The Right rally. To do so, without speculation, I would like to submit a FOIA request to look over the Operational Plan that was devised, authored, and approved by Governor McAuliffe prior to the rally.

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If an officer or PR representative would like to speak to me directly about my request, please feel free to reach out to me at: 434-228-8789.

Thank you very much for any information you can provide.

Cheers,

Natalie

EXHIBIT 5

Subject: FOIA Response

From: Noah.Sullivan@governor.virginia.gov
To: najacobsen@yahoo.com
Cc: Khaki.LaRiviere@governor.virginia.gov
Date: Wednesday, October 11, 2017, 1:42:35 PM EDT

Ms. Jacobsen,

You requested the operational plan for the Unite the Right rally from the Office of the Secretary of Public Safety and Homeland Security. The records you request are exempt as working papers of the Office of the Governor (Va. Code § 2.2-3705.7(2)), as well as law enforcement-sensitive information (Va. Code § 2.2-3706). We therefore will be denying your request.

Thank you for contacting the Office of the Governor.

Sincerely

Noah P. Sullivan
Counsel to Governor Terence R. McAuliffe
Office of the Governor
1111 East Broad Street
Richmond, Virginia 23219
Tel: (804) 786-2211
Fax: (804) 786-3985
Noah.Sullivan@governor.virginia.gov

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

NATALIE JACOBSEN and JACKSON
LANDERS,

Petitioners,

v.

CITY OF CHARLOTTESVILLE

Serve:

S. Craig Brown, City Attorney
Office of the City Attorney
605 East Main Street
Charlottesville, VA 22902

DEPARTMENT OF STATE POLICE

Serve:

Colonel W. Steven Flaherty
7700 Midlothian Turnpike
North Chesterfield, VA 23235

OFFICE OF THE SECRETARY OF
PUBLIC SAFETY AND HOMELAND
SECURITY

Serve:

Brian Moran
Patrick Henry Building
1111 East Broad Street
Richmond, VA 23219

Respondents.

Case No.: CL17-592

AFFIDAVIT OF JACKSON LANDERS

I, Jackson Landers, being duly sworn, state under penalty of perjury that the following is true:

1. I am a citizen of the Commonwealth of Virginia and a resident of Albemarle County, Virginia. I make this affidavit to show good cause as required by Virginia Code § 2.2-3713(A).

2. I have read the attached Amended Petition and know its contents.
3. The statements in the Amended Petition are true to my own knowledge, or upon information and belief. As to those statements that are based upon information and belief, I believe those statements to be true.


Jackson Landers

Sworn to before me this

16th day of November, 2017



NOTARY PUBLIC

my commission expires 1/31/2019



VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

NATALIE JACOBSEN and JACKSON
LANDERS,

Petitioners,

v.

CITY OF CHARLOTTESVILLE

Serve:

S. Craig Brown, City Attorney
Office of the City Attorney
605 East Main Street
Charlottesville, VA 22902

DEPARTMENT OF STATE POLICE

Serve:

Colonel W. Steven Flaherty
7700 Midlothian Turnpike
North Chesterfield, VA 23235

OFFICE OF THE SECRETARY OF
PUBLIC SAFETY AND HOMELAND
SECURITY

Serve:

Brian Moran
Patrick Henry Building
1111 East Broad Street
Richmond, VA 23219

Respondents.

Case No.: CL17-592

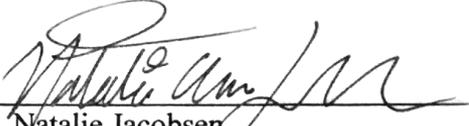
AFFIDAVIT OF NATALIE JACOBSEN

I, Natalie Jacobsen, being duly sworn, state under penalty of perjury that the following is true:

1. I am a citizen of the Commonwealth of Virginia and a resident of Charlottesville, Virginia. I make this affidavit to show good cause as required by Virginia Code § 2.2-3713(A).

2. I have read the attached Amended Petition and know its contents.

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


Natalie Jacobsen

Sworn to before me this

16th day of November, 2017



NOTARY PUBLIC



my commission expires 1/31/2019

CERTIFICATE OF SERVICE

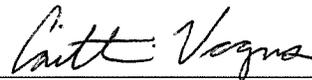
I hereby certify that a true copy of the foregoing Amended Petition for Writ of Mandamus was sent by U.S. Mail on November 21, 2017 to the following addressees as follows:

Victoria N. Pearson
Criminal Justice & Public Safety Division
Office of the Attorney General
202 North Ninth Street
Richmond, VA 23219
vpearson@oag.state.va.us
(Counsel for Respondents Department of State Police and Office of the Secretary of Public Safety and Homeland Security)

Lisa A. Robertson
Charlottesville City Attorney's Office
P.O. Box 911
605 E. Main Street, 2nd Floor (City Hall)
Charlottesville, VA 22902
robertsonl@charlottesville.org
(Counsel for Respondent City of Charlottesville)

Richard H. Milnor
Zunka, Milnor & Carter, Ltd.
P.O. Box 1567
414 Park Street
Charlottesville, Virginia 22902
RMilnor@zmc-law.com
(Counsel for Respondent City of Charlottesville)

I further certify that a copy of this Petition for Writ of Mandamus was sent by email to the email addresses listed above on November 21, 2017.



Caitlin Vogus (VSB #81054)
Counsel for Petitioners Natalie Jacobsen and Jackson Landers