

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE, VIRGINIA

NATALIE JACOBSEN and JACKSON)
LANDERS,)
Plaintiffs,)
v.) Case No. CL17-592
CHARLOTTESVILLE POLICE DEPARTMENT,)
et al.,)
Defendants.)

DEMURRER

COMES NOW the City of Charlottesville, Virginia, by counsel, and enters a limited appearance in this case for the purpose of submitting this Demurrer to the Petition filed by the Plaintiffs in this action, as follows:

1. The Charlottesville Police Department is not a proper party to this action. The Police Department is an operating division of the City of Charlottesville government. In Virginia, an operating division of a local government cannot be sued unless the legislature has expressly vested the operating division with the capacity to be sued. *Gladden v. Charlottesville Va. Police Dep't*, 2017 U.S. Dist. LEXIS 89123, 2017 WL2537369 (W.D. Va. 6/9/2017), citing *Davis v. City of Portsmouth*, 579 F. Supp. 1205, 1210 (E.D. Va. 1983), *aff'd* 742 F.2d 1448 (4th Cir. 1984).

2. The Virginia Freedom of Information Act does not vest an administrative operating division of the City, such as the police department, with capacity to be sued. Further, the provisions of Virginia Code § 2.2-3713 and § 2.2-3714 contemplate that proceedings commenced to enforce rights under the Virginia Freedom of Information Act (FOIA) will be

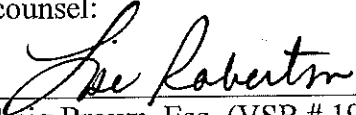
brought either against a locality itself (Va. Code § 15.2-1404 states that “Every locality may sue or be sued in its own name...”) or against an “...officer, employee, or member of a public body...” The City is not a party to this action, and no City officer, employee or member of a public body is a party to this action. An administrative operating division of the City, such as an individual department, is not a “public body” as defined in Virginia Code § 2.2-3701.

2. Virginia Code § 2.2-3706(A)(2)(e) provides an exemption for records “...to the extent such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public.” The records sought by the Plaintiffs *are* the tactical plans for the August 12, 2017 “Unite the Right” Rally, *see* Exhibit 2 attached to the Petition.

3. Virginia Code § 2.2-3706 does **not** contain a “redaction clause”. *Compare* Va. Code 2.2-3705.1 through 2.2-3705.7 (each of which expressly contains the following statement: “Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.”) To the extent that there is any conflict between the provisions of § 2.2-3706 and other provisions of law, the General Assembly has stated that the provisions of § 2.2-3706 shall control, *see* § 2.2-3706(D).

Respectfully submitted,
CITY OF CHARLOTTESVILLE, VIRGINIA

By counsel:



S. Craig Brown, Esq. (VSB # 19286), City Attorney

Lisa A. Robertson, Esq. (VSB# 32486)

Chief Deputy City Attorney

P.O. Box 911, 605 E. Main Street, 2nd Floor (City Hall)

Charlottesville, Virginia 22902

Tel. (434)970-3131

Email: brownc@charlottesville.org ; robertsonl@charlottesville.org

John w. Zunka, Esq. (VSB # 14368)

Richard H. Milnor (VSB #14177)

Ashleigh M. Pivonka, Esq. (VSB# 89492)

Zunka, Milnor & Carter, Ltd.

P.O. Box 1567, 414 Park Street

Charlottesville, Virginia 22902

Tel. (434) 977-0191

Facsimile: (434) 977-0198

CERTIFICATE OF SERVICE

I certify that on the 6th day of November, 2017, I served a true copy of the foregoing document, by electronic mail (where an e-mail address is indicated below) and also by U.S. Mail, first-class, postage pre-paid, to counsel of record, as follows:

Victoria Pearson, OAG
202 North 9th Street
Richmond, VA 23219

Caitlin Vogus
1156 15th St. NW
Suite 1250
Washington DC 20005

Signature: _____

