

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

INSIDER INC., HANNAH BECKLER,  
and IAN KALISH

Petitioners,

v.

VIRGINIA DEPARTMENT OF  
CORRECTIONS

Serve:

Chadwick Dotson, Director  
6900 Atmore Drive  
Richmond, VA 23225

Case No. Cl 24-65

Respondent.

**PETITION FOR WRIT OF MANDAMUS**

Petitioners Insider Inc., Hannah Beckler, and Ian Kalish (collectively, "Petitioners"), by and through their undersigned counsel, state as follows:

1. This case involves an improper attempt by the Virginia Department of Corrections ("VADOC" or "Respondent") to shield records from the public that are required to be disclosed under Virginia's public records law.

2. According to its internal Operating Procedures, VADOC maintains a "Canine Program." *See generally* Exhibit A (Operating Procedure ("OP") 435.3).

3. In at least some instances, VADOC's uses of force involving dogs in its canine program are recorded. Exhibit B (OP 420.1) at 3-4.

4. VADOC uses dogs in the canine program as a "force multiplier," as part of a category that includes canines, "chemical agents," and "impact weapons." Exhibit C (OP 420.2) at 6.

*2/12/21 3:18pm*  
(Date & Time)

FILED  
City of Charlottesville  
Circuit Court Clerk's Office  
Liezelle A. Dugger, Clerk  
By *Antonia O'Bryan*  
Deputy Clerk

5. When any person—inmate, employee, visitor, or otherwise—is bitten by a dog in the Canine Program, OP 435.3 requires that a “Bite Report” be completed in a database called the Dog Information Governance and Operation System (“DINGO”). Exhibit A at 20. As part of a Bite Report, VADOC requires that all bites, abrasions, and tears in clothing caused by the dog be photographed and the photographs kept in DINGO. Exhibit A at 20.

6. On April 19, 2023, Hannah Beckler, a journalist employed by Insider Inc., and Ian Kalish, a resident of Charlottesville (collectively, “Insider”), submitted a request to the Virginia Department of Corrections under the Virginia Freedom of Information Act, Va. Code Ann. § 2.2-3704 *et seq.* (“VFOIA”). Exhibit D.

7. Two subparts of Insider’s request are at issue in this petition. The first subpart of Beckler’s request (the “Red Onion Recordings Request”) specified a request for:

All video and audio recordings in which a VADOC canine bit or otherwise “engaged” an inmate at Red Onion State Prison from January 1, 2017 to December 31, 2022. Please exclude videos pertaining to incidents where VADOC canines responded as a use of force but did not “engage” an inmate.

Exhibit D.

8. The other subpart of Insider’s request at issue in this petition (the “Bite Reports Request”) sought:

All bite reports and internal incident reports of the following incidents:

<b>FACILITY</b>	<b>DATE</b>	<b>VICTIM NAME</b>	<b>K9 OFFICER NAME</b>	<b>K9 NAME</b>
Red Onion	Dec. 11, 2017	Nathaniel Dunmore	K9 Officer Roop	Lojzo
Sussex I	Dec. 25, 2018	Curtis Garret	K9 Officer Michael Williams; K9 officer Christopher Shy; K9 Officer Matthew Franklin	Hurricane (Franklin); Lozjo (Shy)
Wallens Ridge	Jan. 16, 2019	Marcus Barbee	K9 officer T. Spears	
Red Onion	Sept. 20, 2019	Joshua Parker	K9 Officer McReynolds	Butchie
Red Onion	Aug. 9, 2020	Douglas Brown	K9 Officer McCowan	Shadow

Red Onion	Nov. 10, 2020	Cornelius Lightfoot	K9 Officer Baker	ET
Sussex I	April 20, 2021		K9 Officer Markeen Toliver	
Sussex II	May 7, 2021			
Sussex II	June 16, 2021		K9 Officer Markeen Toliver	
	Sept. 24, 2021	J. Anderson	K9 Officer Tyreek Brown	Nero
	Oct. 29, 2021	J. Velazquez	K9 Officer Tyreek Brown	Nero
River North	Nov. 6, 2021		K9 Officer T. Pauley	Micky

9. VADOC denied both subparts of Insider's request, *see* Exhibit E.

10. In response to the Red Onion Recordings Request, VADOC cited three exemptions from the mandatory disclosure requirements of VFOIA:

- (i) Virginia Code § 2.2-3706(B)(4), which exempts from mandatory disclosure "records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment" (the "Records of Persons Imprisoned Exemption");
- (ii) Virginia Code § 2.2-3705.2(14) which exempts from mandatory disclosure records that would reveal certain categories of information like "critical infrastructure" and "surveillance techniques," whose disclosure would "jeopardize the safety or security of any person; governmental facility, building, or structure or persons using such facility, building, or structure" (the "Public Safety and Security Exemption"); and
- (iii) Virginia Code § 2.2-3705.1(1) which exempts from mandatory disclosure "personnel information concerning identifiable individuals" (the "Personnel Information Exemption").

Exhibit E at 1.

11. As set forth below, none of the three asserted exemptions is applicable to the records sought through the Red Onion Recordings Request.
12. In response to the Bite Reports Request, VADOC refused to “confirm or deny that it is in possession of” responsive records, but nonetheless cited both the Personnel Information Exemption and Public Safety and Security Exemption as exempting those records from disclosure. Exhibit E at 2.

13. As set forth below, neither of those exemptions is applicable to the records sought through the Bite Reports Request.

14. Accordingly, Petitioners seek the issuance of a writ of mandamus and other relief pursuant to Virginia Code § 2.2-3713 to require the Virginia Department of Corrections to comply with the provisions of VFOIA.

#### **JURISDICTION AND VENUE**

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

16. This Court is the proper venue for this motion pursuant to Virginia Code § 2.2-3713(A)(3) because VADOC is an agency of the Commonwealth’s government.

#### **PARTIES**

17. Petitioner Hannah Beckler is a journalist employed by Petitioner Insider Inc.
18. Petitioner Insider Inc. is an online media company and news organization focused on journalism in the public interest, with circulation in the Commonwealth.
19. Petitioner Ian Kalish is a citizen of Virginia with residence in Charlottesville, employed by the Reporters Committee for Freedom of the Press, which administers the First Amendment Clinic at the University of Virginia School of Law.

20. Respondent VADOC is the administrative agency for Virginia's correctional system.

21. Respondent is a "public body" of the Commonwealth of Virginia and is therefore governed by the disclosure requirements of VFOIA. Va. Code Ann §§ 2.2-3700, 2.2-3701.

### **FACTS**

#### **The parties' March 13, 2023 agreement resolving an earlier VFOIA request:**

22. On March 13, 2023, Petitioners and Respondent entered an agreement regarding the resolution of an earlier VFOIA request made by Petitioners in February 2022. Exhibit F.

23. Respondent did not fulfill its obligations under that agreement. Specifically, Respondent failed to produce numerous bite reports and internal incident reports contemplated by that agreement, necessitating the Bite Reports Request subpart of Insider's April 19, 2023 Request. *See* Exhibit F; Exhibit G.

24. In any event, the March 13, 2023 agreement does not pertain to Insider's April 19, 2023, request. The parties expressly agreed that "this [March 13] agreement does not bind or constrain the parties as to any other or future FOIA requests served upon VDOC," Exhibit F, such as the one at issue here.

#### **Petitioners' VFOIA requests and Respondent's denial of Petitioners' requests:**

25. On April 19, 2023, Petitioners sent the Red Onion Recordings Request and the Bite Report Request to VADOC. Exhibit D.

26. On May 8, 2023, VADOC denied Petitioners' request in a letter written by Gabriel Fulmer, as described above. Exhibit E.

27. On January 26, 2024, undersigned counsel for Petitioners provided VADOC a copy of this petition as required under Virginia Code § 2.2-3713(C).

28. Pursuant to Virginia Code § 2.2-3713(C), this petition “shall be heard within seven days of when the same is made.”

**FIRST CAUSE OF ACTION**  
**RESPONDENT HAS VIOLATED VFOIA BY FAILING TO PRODUCE RECORDS**  
**RESPONSIVE TO PETITIONERS' RED ONION RECORDINGS REQUEST**

29. Petitioners reassert and adopt by reference paragraphs 1–28.

30. 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, . . . 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.” Va. Code Ann. § 2.2-3701.

31. Video and audio recordings of uses of force involving canines are public records under VFOIA.

32. VFOIA provides that “[a]ll public records . . . shall be presumed open, unless an exemption is properly invoked.” Va. Code Ann. § 2.2-3700(B).

33. VFOIA further 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 this chapter or any other statute.” *Id.*

34. VADOC has denied Petitioners access to the audio and video recordings responsive to Petitioners’ VFOIA Request.

35. In denying Petitioners access to the video and audio recordings of uses of force involving canines, VADOC relies on Virginia Code §§ 2.2-3706(B)(4), 2.2-3705.2(14), and 2.2-3705.1(1).

36. Virginia Code § 2.2-3706(B)(4) is inapplicable to the records sought by the Red Onion Recordings Request. VADOC has failed to show that the Records of Persons Imprisoned Exemption applies to such recordings, which are administrative records of VADOC, not records of persons imprisoned relating to their imprisonment.

37. Virginia Code § 2.2-3705.2(14) is also inapplicable to the records sought by the Red Onion Recordings Request. VADOC has failed to show that such recordings contain information in the categories enumerated by the Safety or Security Exemption and that the release of such information would jeopardize the safety or security of any person or facility.

38. Virginia Code § 2.2-3705.1(1) is also inapplicable to the records sought by the Red Onion Recordings Request. VADOC has failed to show that such recordings contain information in the categories enumerated by the Personnel Exemption.

39. Because VADOC has asserted no applicable exemption justifying the withholding of video and audio recordings of uses of force involving canines, and because those recordings are public records under VFOIA, VADOC's withholding of those records in response to Petitioners' VFOIA Request violates Virginia Code §§ 2.2-3704(A) and 2.2-3700(B).

**SECOND CAUSE OF ACTION**  
**RESPONDENT HAS VIOLATED VFOIA BY FAILING TO PRODUCE**  
**RECORDS RESPONSIVE TO PETITIONERS' BITE REPORTS REQUEST**

40. Petitioners reassert and adopt by reference paragraphs 1–28.

41. Virginia Code § 2.2-3704(B) sets forth several permissible responses for an agency responding to a VFOIA request. Among other requirements, an agency must state that the requested records are (1) withheld in their entirety, Va. Code Ann. § 2.2-3704(B)(1); (2) provided in part and withheld in part, *id.* § 2.2-3704(B)(1); or (3) that the requested records could not be found or do not exist, *id.* § 2.2-3704(B)(1).

42. VADOC failed to comply with § 2.2-3704(B) as to the Bite Reports Request.

43. VADOC produced no records responsive to the Bite Reports Request; as such, the responsive records were withheld in their entirety.

44. VADOC relied on Virginia Code § 2.2-3705.1(1) and 2.2-3705.2(14) to withhold records responsive to Petitioners' request. Exhibit E at 2.

45. Virginia Code § 2.2-3705.1(1) is inapplicable to the records sought by the Bite Reports Request Request. VADOC has failed to show that such recordings contain information in the categories enumerated by the Personnel Exemption.

46. Virginia Code § 2.2-3705.2(14) is also inapplicable to the records sought by the Bite Reports Request. VADOC has failed to show that such recordings contain information in the categories enumerated by the Public Safety or Security Exemption and that the release of such information would jeopardize the safety or security of any person or facility.

47. Because VADOC has asserted no applicable exemption justifying the withholding of bite reports and internal incident reports, and because those reports are public records under VFOIA, VADOC's withholding of those records in response to Petitioners' VFOIA Request violates Virginia Code §§ 2.2-3704(A) and 2.2-3700(B).

**RESPONDENT HAS VIOLATED VFOIA BY FAILING TO PRODUCE REDACTED RECORDS RESPONSIVE TO PETITIONERS' REQUEST**

48. Petitioners reassert and adopt by reference paragraphs 1–47.

49. 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.” Va. Code Ann. § 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.” Va. Code Ann. § 2.2-3704.01.

50. Respondent is required by VFOIA to release the entirety of the requested records. Alternatively, to the extent that portions of records are appropriately withheld, the remainder of those records must be made available to Petitioners, with the withheld portions redacted. Va. Code Ann. § 2.2-3704.1; *see Hawkins v. South Hill*, 2022 WL 11420016, \*4 (Va.).

51. Respondent’s failure to disclose all non-exempt portions of the requested records violates Virginia Code § 2.2-3704.1.

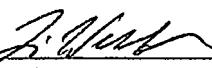
**PRAYER FOR RELIEF**

Wherefore, Petitioners pray that this Court will:

- A. Hold a hearing on this matter within seven days of the filing of this Petition, as required by VFOIA.
- B. Issue a writ of mandamus ordering Respondent to release the records sought in full or, alternatively, to show cause why any portion of those records may not be produced pursuant to an applicable VFOIA exemption.
- C. Order Respondent to pay Petitioners' costs, including attorneys' fees, as Petitioners have substantially prevailed on the merits of the case and no special circumstances make an award of fees unjust. Va. Code Ann. 2.2-3713(D).
- D. Grant any further relief as this Court deems just and proper.

Respectfully submitted,

HANNAH BECKLER, INSIDER INC., and  
IAN KALISH

By:   
Lim Weeks, VA Bar No. 97351  
UNIVERSITY OF VIRGINIA SCHOOL OF LAW  
FIRST AMENDMENT CLINIC  
1156 15th Street NW, Suite 1020  
Washington, D.C. 20005  
Tel: (202) 800-3533

*Counsel for Petitioners*

**CERTIFICATE OF STATUTORY NOTICE**

I hereby certify that, pursuant to Va. Code Ann. § 2.2-3713(C), a copy of this Petition for Writ of Mandamus was sent by UPS on January 25, 2024, for delivery on January 26, 2024, to the following addresses:

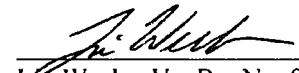
Chadwick Dotson, Director  
6900 Atmore Drive  
Richmond, VA 23225

Department of Corrections  
PO Box 26963  
Richmond, VA 23261

I further certify that a copy of this Petition for Writ of Mandamus was sent by email to the following address on January 26, 2024:

docmail@vadoc.virginia.gov

FOIA@vadoc.virginia.gov

  
\_\_\_\_\_  
Jim Weeks, Va. Bar No. 97351  
*Counsel for Petitioners*

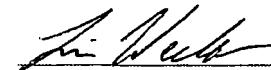
**CERTIFICATE OF SERVICE**

I certify that on or before February 2, 2024, a copy of the foregoing and any attachments thereto will be served by email upon the following addresses:

docmail@vadoc.virginia.gov  
FOIA@VADOC.virginia.gov

If additional service is not waived by counsel for Respondent, a copy will also be served by private process server upon:

Chadwick Dotson  
Department of Corrections  
6900 Atmore Drive  
Richmond, VA 23225

  
Lin Weeks, VA Bar No. 97351  
UNIVERSITY OF VIRGINIA SCHOOL OF LAW  
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Washington, D.C. 20005  
Tel: (202) 800-3533

*Counsel for Petitioners*

**COVER SHEET FOR FILING CIVIL ACTIONS**

COMMONWEALTH OF VIRGINIA

Case No. CL 24-65  
(CLERK'S OFFICE USE ONLY)

Charlottesville

Circuit Court

Insider Inc., Hannah Beckler, and Ian Kalish v./In re: PLAINTIFF(S)

Virginia Department of Corrections  
DEFENDANT(S)

I, the undersigned [ ] plaintiff [ ] defendant [ ] attorney for [ ] plaintiff [ ] defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

**GENERAL CIVIL**

**Subsequent Actions**

- Claim Impleading Third Party Defendant
- Monetary Damages
- No Monetary Damages
- Counterclaim
- Monetary Damages
- No Monetary Damages
- Cross Claim
- Interpleader
- Reinstatement (other than divorce or driving privileges)
- Removal of Case to Federal Court

**Business & Contract**

- Attachment
- Confessed Judgment
- Contract Action
- Contract Specific Performance
- Detinue
- Garnishment

**Property**

- Annexation
- Condemnation
- Ejectment
- Encumber/Sell Real Estate
- Enforce Vendor's Lien
- Escheatment
- Establish Boundaries
- Landlord/Tenant
- Unlawful Detainer
- Mechanics Lien
- Partition
- Quiet Title
- Termination of Mineral Rights

**Tort**

- Asbestos Litigation
- Compromise Settlement
- Intentional Tort
- Medical Malpractice
- Motor Vehicle Tort
- Product Liability
- Wrongful Death
- Other General Tort Liability

**ADMINISTRATIVE LAW**

- Appeal/Judicial Review of Decision of (select one)
  - ABC Board
  - Board of Zoning
  - Compensation Board
  - DMV License Suspension
  - Employee Grievance Decision
  - Employment Commission
  - Local Government
  - Marine Resources Commission
  - School Board
  - Voter Registration
  - Other Administrative Appeal

**DOMESTIC/FAMILY**

- Adoption
  - Adoption – Foreign
- Adult Protection
- Annulment
  - Annulment – Counterclaim/Responsive Pleading
- Child Abuse and Neglect – Unfounded Complaint
- Civil Contempt
- Divorce (select one)
  - Complaint – Contested\*
  - Complaint – Uncontested\*
  - Counterclaim/Responsive Pleading
  - Reinstatement – Custody/Visitation/Support/Equitable Distribution
- Separate Maintenance
  - Separate Maintenance Counterclaim

**WRITS**

- Certiorari
- Habeas Corpus
- Mandamus
- Prohibition
- Quo Warranto

**PROBATE/WILLS AND TRUSTS**

- Accounting
- Aid and Guidance
- Appointment (select one)
  - Guardian/Conservator
  - Standby Guardian/Conservator
  - Custodian/Successor Custodian (UTMA)
- Trust (select one)
  - Impress/Declare/Create
  - Reformation
- Will (select one)
  - Constitute
  - Contested

**MISCELLANEOUS**

- Amend Birth/Death Certificate
- Appointment (select one)
  - Church Trustee
  - Conservator of Peace
  - Marriage Celebrant
- Approval of Transfer of Structured Settlement
- Bond Forfeiture Appeal
- Declaratory Judgment
- Declare Death
- Driving Privileges (select one)
  - Reinstatement pursuant to § 46.2-427
  - Restoration – Habitual Offender or 3<sup>rd</sup> Offense
- Expungement
- Firearms Rights – Restoration
- Forfeiture of Property or Money
- Freedom of Information
- Injunction
- Interdiction
- Interrogatory
- Judgment Lien-Bill to Enforce
- Law Enforcement/Public Official Petition
- Name Change
- Referendum Elections
- Sever Order
- Taxes (select one)
  - Correct Erroneous State/Local
  - Delinquent
- Vehicle Confiscation
- Voting Rights – Restoration
- Other (please specify)

Damages in the amount of \$ ..... are claimed.

2/1/2024

DATE

PLAINTIFF

DEFENDANT

ATTORNEY FOR

PLAINTIFF

DEFENDANT

Lin Weeks, VA Bar No. 97351

PRINT NAME

1156 15th Street NW, Suite 1020, Washington, D.C. 20005

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

(202) 800-3533

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EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

FORM CC-1416 (MASTER) PAGE ONE 02/23

\*\*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

2/1/2024

By

APS