



REQUEST UNDER THE VIRGINIA FREEDOM OF INFORMATION ACT

August 14, 2020

Melena Johnson
FOI Office
Office of the City Attorney
2401 Courthouse Drive
Virginia Beach, VA 23456

By Electronic mail: foia@vbgov.com

RE: FOIA Request – Certain City records (City Manager, City Attorney)

Dear Ms. Johnson:

On behalf of Chris Horner of Keswick, Virginia, pursuant to the Virginia Freedom of Information Act, Va. Code § 2.2-3700 *et seq.*, please provide us, for Mr. Horner and as the custodian of records of the City of Norfolk, within the statutorily prescribed time:

I. Copies of all correspondence and other records **and accompanying information¹, including also any attachments**, which was a) **sent to or from** (including also copying, whether as cc: or bcc:), i) Tom Leahy and/or ii) Mark D. Stiles, which b) includes, *anywhere*, whether in an email address, in the sent, to, from, cc, bcc fields, or the subject fields or body of an email or email “thread”, including also in any attachments, @climateintegrity.org, and that c) is dated from October 1, 2019 through the date you process this request, inclusive.

¹ This includes public records, and associated public information, see discussion of Data Delivery Standards, *infra*.

II. In the event the City claims privilege for one or more records responsive to this request, please also provide any record which the City claims or will claim establishes or otherwise supports a claim of privilege for these records, whether it be a common interest, confidentiality or non-disclosure agreement, or other.

Please include all relevant signature pages as part of each record.

A response can take several forms but 1) pursuant to §2.2-3704 (B)(1) you must “identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of 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.”

I note § 2.2-3700, liberal construction for broader access and, similarly, narrow construction of exemptions.

Regarding item “1”, Mr. Horner requests the entire thread in which any email responsive to the above description appears regardless if portions of the thread(s) pre-date 2018.

Please consider as responsive entire email “threads” containing any information responsive to this request, regardless whether any part of that thread falls outside the cited search parameters. Given the nature of the records responsive to this request, all should be in electronic format, and therefore there should be no photocopying costs. If there is any cost associated with the searching, copying or production of these records, however, please also notify me in writing immediately. Please provide an estimate of anticipated costs in the event that there are fees for

processing this Request. To keep costs and copying to a minimum **please provide copies of all productions to the email used to send this request.** Given the nature of the records responsive to this request, all should be in electronic format, and therefore there should be no photocopying costs (see discussion, *infra*).

To further help narrow the population of potentially responsive records and reduce the review required in order to complete processing of this request, **Mr. Horner does not seek correspondence that merely forwards press clippings, such as news accounts or opinion pieces, if that correspondence has no comment or no substantive comment added by a party** in the thread (e.g, an electronic mail message that includes any expression of opinion or viewpoint would be considered as including substantive comment; examples of non-responsive emails would be those forwarding a news report or opinion piece with no comment or only “fyi”, or “interesting”).

Mr. Horner requests records on your system, e.g., its backend logs, and does *not* seek only those records which survive on an employee’s own machine or account.

Mr. Horner does not demand your Office produce requested information in any particular form, instead **he requests records in their native form, with specific reference to the U.S. Securities and Exchange Commission Data Delivery Standards.**² The covered information Mr. Horner seeks is electronic information, this includes electronic *records*, and other public *information*.

To quote the SEC Data Delivery Standards, “Electronic files must be produced in their native format, i.e. the format in which they are ordinarily used and maintained during the normal

² <https://www.sec.gov/divisions/enforce/datadeliverystandards.pdf>.

course of business. For example, an MS Excel file must be produced as an MS Excel file rather than an image of a spreadsheet. *(Note: An Adobe PDF file is not considered a native file unless the document was initially created as a PDF.)*” (emphases in original).

In many native-format productions, certain public information remains contained in the record (e.g., metadata). Under the same standards, to ensure production of all information requested, if your production will be de-duplicated it is vital that you 1) preserve any unique metadata associated with the duplicate files, for example, custodian name, and, 2) make that unique metadata part of your production.

Native file productions may be produced without load files. However, native file productions must maintain the integrity of the original meta data, and must be produced as they are maintained in the normal course of business and organized by custodian-named file folders. A separate folder should be provided for each custodian.

In the event that necessity requires your Office to produce a PDF file, due to your normal program for redacting certain information and such that native files cannot be produced as they are maintained in the normal course of business, in order to provide all requested information each PDF file should be produced in separate folders named by the custodian, and accompanied by a load file to ensure the requested information appropriate for that discrete record is associated with that record. The required fields and format of the data to be provided within the load file can be found in Addendum A of the above-cited SEC Data Standards. All produced PDFs must be text searchable.

In the context of prior experience with responsive agencies taking the effort to physically print, then (often, poorly) scan electronic mail into (typically, non-searchable) PDF files, it is

noted that production of electronic records necessitates no such additional time, effort or other resources, and no photocopying expense. Any such effort as described is most reasonably viewed as an effort to frustrate the requester's use of the public information.

Mr. Horner looks forward to your timely response within five days, as required by law. If you have any questions, or would like to discuss this matter further, do not hesitate to contact me by email. I look forward to your timely response.

Respectfully submitted,
Neal Cornett
for Government Accountability & Oversight, P.C.

cc: Mr. Chris Horner
1489 Kinross Lane
Keswick, VA 22947