



SCHOOL of LAW

Jennifer A. Nelson  
Co-Director and Lecturer, First Amendment Clinic

By email

July 29, 2020

Phil Giaramita  
Strategic Communications Officer  
Albemarle County Public Schools  
401 McIntire Road, 3rd Floor  
Charlottesville, VA 22902

RE: July 15, 2020, Virginia Freedom of Information Act Requests by Jessie Higgins

Dear Mr. Giaramita:

We write in connection with four requests by Charlottesville Tomorrow reporter Jessie Higgins under Virginia’s Freedom of Information Act (“VFOIA”), Va. Code Ann. §§ 2.2-3700-3715 (2020), to the Albemarle County Public Schools, which she transmitted by email on July 15, 2020, and with respect to which you confirmed receipt on the same day. Copies of those emailed requests are attached to this letter.

The statutory timeline for responding to VFOIA requests is clear. Any public body must respond within five work-days of receiving a request. § 2.2-3704(B). If it is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period, the public body is obligated to explain why a response within that period is impossible. § 2.2-3704(B)(4). The public body may then take an additional seven work-days to produce the documents, explain whether and why they are being withheld (in whole or in part, and then explain why segregable portions are being withheld), or whether the documents cannot be found or do not exist. § 2.2-3704(B)(1)-(4). By our count, the last day of that seven-work-day period is July 31, 2020.

VFOIA permits any “public body [to] petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time

required by this chapter will prevent the public body from meeting its operational responsibilities.” § 2.2-3704(C). To our knowledge, the Albemarle County Public Schools has not petitioned an appropriate court for additional time, nor has it sought to make reasonable efforts to reach an agreement with Higgins concerning the production of the material requested, as would be required before proceeding with a petition.

You stated in your responses to Ms. Higgins’s four requests that “under an emergency governance ordinance enacted by the Board of Supervisors pursuant to an opinion by the state Attorney General, the response time requirements for FOIA requests have been lifted.” *See, e.g.*, Email from Phil Giaramita to Jessie Higgins (July 15, 2020; 14:20 EST). We understand that the ordinances to which you refer are Emergency Ordinances No. 20-A(6) and No. 20-E(2).<sup>1</sup>

Your statutory obligations under VFOIA, however, cannot be waived by an emergency ordinance, and we accordingly respectfully request that you comply with these statutory obligations. Unlike the section of VFOIA governing official meetings held electronically, § 2.2-3708.2, which does expressly provide for remote meetings in some circumstances upon the declaration of an emergency, there are *no* emergency exceptions in VFOIA that permit a public body to modify the time by which it must reply to VFOIA requests.

Furthermore, the Attorney General’s opinion that you apparently reference emphasizes the “limits of the authority” conferred by Va. Code Ann. § 15.2-1413, the “continuity of government” provision, which requires that any ordinances enacted pursuant to its authority be “carefully limited in scope.” *See* Official Advisory Opinion from the Office of the Attorney General to the Honorable Richard C. (Rip) Sullivan, Jr. (Mar. 20, 2020), 2020 WL 1550202. A blanket exemption from VFOIA’s deadlines is unlikely to qualify as “carefully limited” particularly in light of the fact that the vast majority of public bodies in Virginia, including the Governor’s office and the Virginia Department of Health, continue to process VFOIA requests in a timely fashion. *See also* Va. Code Ann. § 2.2-3700(B) (“Any ordinance adopted by a local governing body that conflicts with the provisions of [VFOIA] shall be void.”).

We certainly understand the complications that may be posed by requests that include material requiring a physical search and we stand ready to work with you to find a mutually satisfactory resolution to the extent a physical search for documents is required. But for

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<sup>1</sup> No. 20-A(6), was enacted on April 15, 2020, <https://perma.cc/5CYQ-5N6J>, *see* § 7(D), and No. 20-E(2) was enacted on March 27, <https://perma.cc/4Z5M-ZFW9>, *see* § 7(E).

electronic documents such as emails that you continue to have regular access to, we again respectfully ask that you comply with your obligations under VFOIA.

The First Amendment Clinic at the University of Virginia School of Law is representing Charlottesville Tomorrow in this matter. Please do not hesitate to contact Jennifer Nelson, co-director of the Clinic at 202-795-9312 or [jn5g@lawschool.virginia.edu](mailto:jn5g@lawschool.virginia.edu) with any questions.

Sincerely,



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Jennifer A. Nelson  
Co-Director, First Amendment Clinic  
University of Virginia School of Law



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Giles Morris  
Executive Director  
Charlottesville Tomorrow

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**Public records request — bussing emails**

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Phil Giaramita <pgiaramita@k12albemarle.org>  
To: Jessie Higgins <jhiggins@cvilletomorrow.org>

Wed, Jul 15, 2020 at 2:13 PM

Jessie, thank you for this request. Under an emergency governance ordinance enacted by the Board of Supervisors pursuant to an opinion by the state Attorney General, the response time requirements for FOIA requests have been lifted. This is a direct result of COVID-19 restrictions. Nonetheless, we will do our very best to get this information to you as soon as possible.

Phil

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From: Jessie Higgins <jhiggins@cvilletomorrow.org>  
Sent: Wednesday, July 15, 2020 1:42:50 PM  
To: Phil Giaramita  
Subject: [EXTERNAL]Public records request — bussing emails

Jessie Higgins

100 5th Street NE

Charlottesville, VA, 22902

July 15, 2020

To: Albemarle County Public Schools

Dear Phil Giaramita;

I am making a request under the Virginia Freedom of Information Act (§2.2-3700, et seq.).

I would like copies of the following records:

Please provide me with any emails sent to and/or from [schoolboard@k12albemarle.org](mailto:schoolboard@k12albemarle.org), [kacuff@k12albemarle.org](mailto:kacuff@k12albemarle.org), [kcallsen@k12albemarle.org](mailto:kcallsen@k12albemarle.org), [jle@k12albemarle.org](mailto:jle@k12albemarle.org), [gpaige@k12albemarle.org](mailto:gpaige@k12albemarle.org), [eosborne@k12albemarle.org](mailto:eosborne@k12albemarle.org), [doberg@k12albemarle.org](mailto:doberg@k12albemarle.org), [jalcaro@k12albemarle.org](mailto:jalcaro@k12albemarle.org) and [mhaas@k12albemarle.org](mailto:mhaas@k12albemarle.org) pertaining to bussing during the last 30 days. I would like these emails emailed to [jhiggins@cvilletomorrow.org](mailto:jhiggins@cvilletomorrow.org). If you have any questions, please call me at 812-431-6848.

Pursuant to the Act, I request that within five working days you (a) provide me with all the records I request; (b) if the records are exempt from disclosure, identify which records are going to be withheld pursuant to which specific Code provision; or (c) if the records will be provided in part, identify which records are being withheld pursuant to which specific Code provision, and release the remaining, nonexempt records to me.

If it is not practically possible to provide the records within five working days, please notify me that you will need an additional seven working days, as provided in the Act. As provided by FOIA, please provide an estimate of the costs of meeting my request before undertaking the task. Also, an acknowledgement of receipt of this request would be appreciated.

I look forward to your response.

Sincerely,

Jessie Higgins

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**Public records request — bussing**

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**Phil Giaramita** <pgiaramita@k12albemarle.org>  
To: Jessie Higgins <jhiggins@cvilletomorrow.org>

Wed, Jul 15, 2020 at 2:17 PM

Jessie, as noted in my other email to you this afternoon, an emergency governance ordinance enacted by the Board of Supervisors pursuant to an opinion by the state Attorney General, the response time requirements for FOIA requests have been lifted. This is a direct result of COVID-19 restrictions. Nonetheless, we will do our very best to get this information to you as soon as possible.

Phil

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From: Jessie Higgins <jhiggins@cvilletomorrow.org>  
Sent: Wednesday, July 15, 2020 1:21:53 PM  
To: Phil Giaramita  
Subject: [EXTERNAL]Public records request — bussing

Jessie Higgins

100 5th Street NE

Charlottesville, VA, 22902

July 15, 2020

To: Albemarle County Public Schools

Dear Phil Giaramita;

I am making a request under the Virginia Freedom of Information Act (§2.2-3700, et seq.).

I would like copies of the following records:

Please provide me with any written plans, including draft and preliminary plans, for how the district will manage bussing this fall. I would like these documents emailed to [jhiggins@cvilletomorrow.org](mailto:jhiggins@cvilletomorrow.org)<mailto:jhiggins@cvilletomorrow.org>. If you have any questions, please call me at 812-431-6848.

Pursuant to the Act, I request that within five working days you (a) provide me with all the records I request; (b) if the records are exempt from disclosure, identify which records are going to be withheld pursuant to which specific Code provision; or (c) if the records will be provided in part, identify which records are being withheld pursuant to which specific Code provision, and release the remaining, nonexempt records to me.

If it is not practically possible to provide the records within five working days, please notify me that you will need an additional seven working days, as provided in the Act. As provided by FOIA, please provide an estimate of the costs of meeting my request before undertaking the task. Also, an acknowledgement of receipt of this request would be appreciated.

I look forward to your response.

Sincerely,

Jessie Higgins

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**Public Records request — reopening plans**

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**Phil Giaramita** <pgiaramita@k12albemarle.org>  
To: Jessie Higgins <jhiggins@cvilletomorrow.org>

Wed, Jul 15, 2020 at 2:20 PM

Jesse, as noted in three other emails to you today under an emergency governance ordinance enacted by the Board of Supervisors pursuant to an opinion by the state Attorney General, the response time requirements for FOIA requests have been lifted. This is a direct result of COVID-19 restrictions. Nonetheless, we will do our very best to get this information to you as soon as possible.

Phil

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From: Jessie Higgins <jhiggins@cvilletomorrow.org>  
Sent: Wednesday, July 15, 2020 1:06:49 PM  
To: Phil Giaramita  
Subject: [EXTERNAL]Public Records request — reopening plans

Jessie Higgins

100 5th Street NE

Charlottesville, VA, 22902

July 15, 2020

To: Albemarle County Public Schools

Dear Phil Giaramita:

I am making a request under the Virginia Freedom of Information Act (§2.2-3700, et seq.).

I would like copies of the following records:

Please provide me with any written plans, including draft or preliminary plans, pertaining to the reopening, either in person or online, of Albemarle County Public Schools. I would like these documents emailed to [jhiggins@cvilletomorrow.org](mailto:jhiggins@cvilletomorrow.org)<mailto:jhiggins@cvilletomorrow.org>. If you have any questions, please call me at 812-431-6848.

Pursuant to the Act, I request that within five working days you (a) provide me with all the records I request; (b) if the records are exempt from disclosure, identify which records are going to be withheld pursuant to which specific Code provision; or (c) if the records will be provided in part, identify which records are being withheld pursuant to which specific Code provision, and release the remaining, nonexempt records to me.

If it is not practically possible to provide the records within five working days, please notify me that you will need an additional seven working days, as provided in the Act. As provided by FOIA, please provide an estimate of the costs of meeting my request before undertaking the task. Also, an acknowledgement of receipt of this request would be appreciated.

I look forward to your response.

Sincerely,

Jessie Higgins

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**Public records request — emails on reopening**

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Phil Giaramita <pgiaramita@k12albemarle.org>  
To: Jessie Higgins <jhiggins@cvilletomorrow.org>

Wed, Jul 15, 2020 at 2:19 PM

Jesse, as noted in two other emails to you, under an emergency governance ordinance enacted by the Board of Supervisors pursuant to an opinion by the state Attorney General, the response time requirements for FOIA requests have been lifted. This is a direct result of COVID-19 restrictions. Nonetheless, we will do our very best to get this information to you as soon as possible.

Phil

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From: Jessie Higgins <jhiggins@cvilletomorrow.org>  
Sent: Wednesday, July 15, 2020 1:16:51 PM  
To: Phil Giaramita  
Subject: [EXTERNAL]Public records request — emails on reopening

Jessie Higgins

100 5th Street NE

Charlottesville, VA, 22902

July 15, 2020

To: Albemarle County Public Schools

Dear Phil Giaramita;

I am making a request under the Virginia Freedom of Information Act (§2.2-3700, et seq.).

I would like copies of the following records:

Please provide me with any emails sent to and/or from [schoolboard@k12albemarle.org](mailto:schoolboard@k12albemarle.org), [kacuff@k12albemarle.org](mailto:kacuff@k12albemarle.org), [kcallsen@k12albemarle.org](mailto:kcallsen@k12albemarle.org), [jle@k12albemarle.org](mailto:jle@k12albemarle.org), [gpaige@k12albemarle.org](mailto:gpaige@k12albemarle.org), [eosborne@k12albemarle.org](mailto:eosborne@k12albemarle.org), [doberg@k12albemarle.org](mailto:doberg@k12albemarle.org), [jalcaro@k12albemarle.org](mailto:jalcaro@k12albemarle.org) and [mhaas@k12albemarle.org](mailto:mhaas@k12albemarle.org) pertaining to plans to reopen Albemarle County Public Schools either in person or online during the last 30 days. I would like these emails emailed to [jhiggins@cvilletomorrow.org](mailto:jhiggins@cvilletomorrow.org). If you have any questions, please call me at 812-431-6848.

Pursuant to the Act, I request that within five working days you (a) provide me with all the records I request; (b) if the records are exempt from disclosure, identify which records are going to be withheld pursuant to which specific Code provision; or (c) if the records will be provided in part, identify which records are being withheld pursuant to which specific Code provision, and release the remaining, nonexempt records to me.

If it is not practically possible to provide the records within five working days, please notify me that you will need an additional seven working days, as provided in the Act. As provided by FOIA, please provide an estimate of the costs of meeting my request before undertaking the task. Also, an acknowledgement of receipt of this request would be appreciated.

I look forward to your response.

Sincerely,

Jessie Higgins

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