

Circuit Court
OF THE
City Of Richmond

MELVIN R. HUGHES, JR.
JUDGE

JOHN MARSHALL COURTS BUILDING
400 NORTH 9TH STREET
RICHMOND, VIRGINIA 23219-1540

April 3, 2008

Steven S. Biss, Esquire
P.O. Box 592
Richmond, Virginia 23219

Robyn N. Seabrook, Esquire
P.O. Box 518
Richmond, Virginia 23218-0518

Re: CL08-553
John Butcher
v.
School Board of the City of Richmond

Dear Counsel:

I have the respective letter and brief provided following the March 24 hearing on plaintiff's Verified Complaint for Injunction.

Defendant's response of January 24, 2008 with the personnel record exemption, coming as it did more than the five working days following plaintiff's request on January 14, 2008 (Va. Code § 2.2-3704 B requires a response within five days of receiving a request) amounts to a "[f]ailure to respond to a request for records..[and]..a denial of the request...constitut[ing] a violation .." of the Virginia Freedom of Information Act. See Va. Code § 2.2-3704 E. While the documents and correspondence requested may fall within the exclusion allowed in Va. Code § 2.2-3705.1,1 and as argued constitutes "contracts...settling public employee employment disputes" under Va. Code § 2.2-3705.8 to which the public access may be denied, the exclusion went unclaimed in a timely way.

There is no merit in defendant's contention that its claims of personnel record exemption is timely because

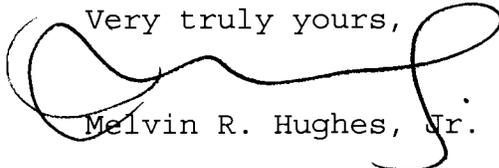
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plaintiff did not specify "a separation agreement" until January 23. The January 14 request sought documents "prepared, owned or in the possession" of the defendant and specifies amendments to Sheeran's contract. The characterization of the agreement as a settlement document may be accurate but an agreement having to do with a modification of Sheeran's employment contract fits the description of an amendment as sought in the January 14 request.

Lastly, defendant's response that the requested agreement and correspondence were not in its possession does not defeat the fact that the documents, although in the hands of defendant's attorneys at the time, nonetheless are in defendant's constructive possession as "public records...in the possession...of...agents."

Accordingly, plaintiff is entitled to the relief prayed for and the court will so order. ("A single instance of denial of the rights and privileges conferred...shall be sufficient to invoke the remedies granted herein." See Va. Code § 2.2-3713 D.) Mr. Biss may prepare and submit an appropriate order for relief with any exceptions noted.

Very truly yours,



Melvin R. Hughes, Jr.

slc