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MATTER NO.

00230-001

April 2, 2008

HAND-DELIVERED

The Honorable Melvin R. Hughes, Jr., Judge
Richmond Circuit Court – Civil Division
John Marshall Courts Building
400 North 9th Street
Richmond, Virginia 23219

RE: John Butcher v. School Board of the City of Richmond
CL08-553-1

Dear Judge Hughes:

I am in receipt of Ms. Seabrook's letter to the Court dated March 31, 2008. I take issue with her *ex parte* comments, especially her statement that the pages of the transcript attached to my letter were somehow "misleading" or "provided out of context".

At the hearing on March 24, you listened to the argument based upon the stipulated record. You did indeed rule that the School Board failed to timely invoke any exemption to disclosure of the draft of the separation agreement between Mr. Sheeran and the School Board.

For reasons which are still unclear to me, counsel for the School Board then wanted you to review the draft separation agreement before turning it over to Mr. Butcher.

Mr. Butcher's January 14, 2008 FOIA request specifically demanded production of all amendments to Mr. Sheeran's employment contract. The draft "Separation" agreement most certainly amended Sheeran's employment agreement. ***The School Board paid Sheeran after he left Richmond in November 2007 pursuant to the terms of the draft document! See, e.g., Exhibit 2 (Payroll Records).***

There is no better evidence that the School Board was acting pursuant to the draft Separation Agreement than the fact that the School Board was paying Sheeran.

FOIA required the School Board to raise and cite any and all applicable exemptions within *five (5)* working days of Mr. Butcher's January 14, 2008 request.

The School Board failed to raise any issue concerning "personnel matters" until January 24, 2008 – that is *seven (7)* working days after receiving the FOIA request from Mr. Butcher – and it is *too late!*

The School Board's argument that the draft separation agreement is not a amendment to Mr. Sheeran's employment is nonsensical. The document is called a "Separation" agreement for a reason. It memorializes a "Separation" from employment and it changes the terms of Sheeran's original employment "agreement". The School Board was performing under the amendment.

As of January 14, 2008, the draft Separation Agreement existed on the computer of counsel – and agent – for the School Board.

The School Board should have truthfully responded on January 22, 2008 that it had an amendment to Mr. Sheeran's employment in draft form, even through the draft was not signed, and, therefore did not become an exempt "contract" under § 2.2-3705.8, until February 4, 2008.

And what of the School Board's other violations? The School Board flagrantly violated FOIA when it intentionally withheld and failed to timely produce the first 2 pages of a letter from Mr. Sheeran's attorney to counsel for the School Board, *Exhibit 5*, and when it failed to produce correspondence from the School Board's attorney to Mr. Sheeran's counsel, *Exhibit 8*. Even though the School Board untimely produced these documents after-the-fact (after Mr. Butcher filed his complaint in fact), ***this not render the FOIA violations moot.*** No public body should be permitted to treat its citizens or violate the express mandate of FOIA so cavalierly.

The School Board went way over the line when it concealed the draft of the "Separation Agreement", which is also expressly referred to in "correspondence" between counsel for Sheeran and the School Board. *E.g., Exhibit 5.*

For the reasons stated, Mr. Butcher requests the Court to Order production of the draft Separation Agreement, for which no exemption was timely invoked.

Yours very truly,



Steven S. Biss

cc. Bevill M. Dean, Clerk
John R. Butcher
Robyn N. Seabrook, Esq. (via regular mail)