



EXHIBIT A ~ VFOIA Request To: Bruce Jones / Commonwealth's Attorney
P.O. Box 690 / Eastville, VA 23347

	<p>The Unalienable Rights Foundation P.O. Box 65002 Virginia Beach, Virginia 23467-5002 Telephone 757-818-8003 E-Mail UnalienableRights@us</p>	
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Bruce Jones ~ Hand Delivered
Commonwealth's Attorney
P.O. Box 690
Eastville, VA 23347

Dear Mr. Jones:

Introduction

As used herein Virginia Code / Title 1 General Provisions / Chap. 1 Code of Virginia, §§ 1-1 c 1-9 / is understood to mean and include:

§ 1-1. Contents and designation of Code. c The laws embraced in this and the following titles, chapters, articles and sections of this act shall constitute, and be designated and cited as the "Code of Virginia," hereinafter referred to as "the Code" or "this Code." (Code 1919, § 1; R. P. 1948, § 1-1.)

UARF adds to the aforesaid designation, for the purpose of this request, simply "CODE".

- 1 The Unalienable Rights Foundation [UARF],** (Virginia State Corporation
- 2 Commission ID No. 0632406-5 is a Virginia citizen,** a Virginia a not-for-

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profit corporation/organization and a **news organization** {see www.uarf.us}) is endeavoring to provide a valuable public service by independently analyzing and reviewing, without cost to the taxpayers, the operations and **records of public entities/bodies** to insure that the operations of government, such as Northampton County Virginia [NHC] are ethically and competently run.

UARF requests that you provide the documents for our inspection this day [as we personal appear before you or your deputy] found in EXHIBIT C attached hereto to for the persons named in EXHIBIT B attached hereto in accordance with Virginia Code §2.2-3704.A.:

"Public records" and "Electronic record"

We first find a definition of "Public Record" in Virginia law; In 1874, the Virginia Supreme Court [SCOVA (added by UARF)] defined a public record as a written memorial, intended to serve as evidence of something written, said or done, made by a public officer authorized to make it. *Coleman v. Commonwealth*, 66 Va. (25 Gratt.) 865, 881-82 (1874)."

UARF notes that in its wisdom to accommodate the new technologies that create a memorialization of something written or done by a public official the Virginia Assembly [GA] expanded the 1874 definition of "Public Record" [PR] by adding to the CODE [statutory amendments to the common law] several sections that further define a PR. The language and words of those amendments did not abrogate the common law definition of PR. The General Assembly has demonstrated in the past its intent to abrogate the common law when it is its intent to do so by saying the legislation is intended to do exactly that. In the following code sections we clearly see the legislature's intent is to amend the common law and not abrogate it by its exclusion of the word or words of the same meaning as abrogate in the amendments. Primary among these CODE sections are;

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35 a. Virginia Code § 2.2-3701 **"Public records" means all**
36 **writings and recordings** that consist of letters, words or
37 numbers, or their equivalent, set down by handwriting,
38 typewriting, printing, photostatting, photography, magnetic
39 impulse, optical or magneto-optical form, mechanical or
40 electronic recording or other form of data compilation, however
41 stored, and regardless of physical form or characteristics,
42 prepared or owned by, or in the possession of a public body or
43 its officers, employees or agents in the transaction of public
44 business. . . . ; **FOIA defines "public records" as all**
45 **writings and recordings that consist of letters, words or**
46 **numbers, or their equivalent, set down by handwriting,**
47 **typewriting, printing, . . . mechanical or electronic**
48 **recording or other form of data compilation, however**
49 **stored, and regardless of physical form or characteristics,**
50 **prepared or owned by, or in the possession of a public**
51 **body or its officers, employees or agents in the**
52 **transaction of public business. *Virginian-Pilot Media Cos.***
53 ***v. City of Norfolk Sch. Bd.*, 4 Cir. CL102815, 81 Va. Cir.**
54 **450 (2010).** And;

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56 b. "Electronic record" means a public record whose creation,
57 storage, and access require the use of an automated system or
58 device. Ownership of the hardware, software, or media used to
59 create, store, or access the electronic record has no bearing on
60 a determination of whether such record is a public record.
61 Virginia Code § 42.1-77.

62
63 c. "Essential public record" means records that are
64 required for recovery and reconstruction of any agency to
65 enable it to resume its core operations and functions and
66 **to protect the rights and interests of persons.**
67 **Code §42.1-77**

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d. "Archival record" means a public record of continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of services and activities mandated by law that is identified on a Library of Virginia approved records retention and disposition schedule as having sufficient informational value to be permanently maintained by the Commonwealth. Virginia Code § 42.1-77.

When reading any provision of CODE and the aforesaid we must keep in mind what the CODE says on what we do with the 1874 SCOVA holding on PR or any other component of the Common Law:

Virginia Code 1-200 **The common law** of England, **insofar as it is not repugnant to the principles of the Bill of Rights and Constitution of this Commonwealth, shall continue in full force within the same, and be the rule of decision, except as altered by the General Assembly.** (Code 1919, § 2, § 1-10; 2005, c.839.)

Virginia Code 1-201 **The right and benefit of all writs, remedial and judicial, given by any statute or act of Parliament, made in aid of the common law prior to the fourth year of the reign of James the First, of a general nature, not local to England, shall still be saved, insofar as the same are consistent with the Bill of Rights and Constitution of this Commonwealth and the Acts of Assembly.** (Code 1919, § 3, § 1-11; 2005, c. 839.)

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You should include in **a.** through **d.** above records created in the course of your regularly conducted public business activity in your regular practice to make these public records in accordance with the practices you are to follow in doing so, as found set out in the promulgations of the Code of Virginia, the U.S. Code, and their authorized corresponding rules and regulations. This includes the public records that are made at or near the time of the events they are purport to describe, by a person with the knowledge of the acts or events, or by a computer or other similar digital means or as may described in the Code of Virginia which contemporaneously reports/records the event as it occurred including the index(s) of those public records.

ANALYSIS

Virginia Freedom of Information Act, Generally
Virginian-Pilot Media Cos. v. City of Norfolk Sch. Bd., 4 Cir.
CL102815, 81 Va. Cir. 450 (2010)

A. Virginia Freedom of Information Act, Generally

Virginia's Freedom of Information Act was enacted in 1968 to ensure citizens ready access to public records and free entry to meetings where "business of the people is being conducted." Va. Code Ann. § 2.2-3700 (2010). **FOIA provisions are to be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld** or meeting closed to the public **unless specifically made exempt pursuant to [the Act] or other specific provision of law.** *Virginian-Pilot Media Cos. v. City of Norfolk Sch. Bd.*,

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128 4 Cir. CL102815, 81 Va. Cir. 450 (2010) *Id.* § 2.2-700(B);
129 *see also City of Danville v. Laird*, 223 Va. 271, 276, 288
130 S.E.2d 429, 431 (1982)

131
132 **("The policy expressly stated in this section is that**
133 **this chapter shall be liberally construed to enable**
134 **citizens to observe the operations of government**
135 **and that the exemptions shall be narrowly**
136 **construed in order that nothing which should be**
137 **public may be hidden from any person.").** *City of*
138 *Danville v. Laird*, 223 Va. 271, 276, 288 S.E.2d 429, 431
139 (1982), *Virginian-Pilot Media Cos. v. City of Norfolk Sch.*
140 *Bd.*, 4 Cir. CL102815, 81 Va. Cir. 450 (2010)

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142 **FOIA requires all public records to be open to**
143 **inspection and copying by any Virginia citizens,**
144 **including representatives of newspapers and**
145 **magazines with in-state circulation, subject to**
146 **certain provisions excluding mandatory disclosure of**
147 **records.** See Va. Code Ann. § 2.2-3704(A) (2010); *id.* §§
148 2.2-3705.1(1)-(13). Section 2.2-3705.1(3), upon which
149 Defendant largely relies in refusing most of Plaintiff's FOIA
150 request, provides that "[I]legal memoranda and other
151 work product compiled specifically for use in
152 litigation or for use in an active administrative
153 investigation concerning a matter that is properly
154 the subject of a closed meeting under § 2.2-3711" are
155 excluded from mandatory disclosure. *Id.*

156
157 **FOIA defines "public records" as writings and**
158 **recordings that consist of letters, words or numbers,**
159 **or their equivalent, set down by handwriting,**

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typewriting, printing, . . . mechanical 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. *Id.* § 2.2-3701.

Among other entities, FOIA defines "public body" as encompassing school boards, as well as any "committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members." *Id.* The Norfolk School Board constitutes a public body. *Virginian-Pilot Media Cos. v. City of Norfolk Sch. Bd.*, 4 Cir. CL102815, 81 Va. Cir. 450 (2010)

The full text of the CODE the Court relies on reads:

Virginia Code § 2.2-3701 **"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related**

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190 Neurological Injury Compensation Program and its board of directors
191 established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2
192 and (ii) **any committee, subcommittee, or other entity however**
193 **designated, of the public body created to perform delegated**
194 **functions of the public body or to advise the public body. It**
195 **shall not exclude any such committee, subcommittee or entity**
196 **because it has private sector or citizen members.** Corporations
197 organized by the Virginia Retirement System are "public bodies" for
198 purposes of this chapter.

199

200 Agency as referenced in § 2.2-3701 is defined in Virginia Code
201 § 42.1-77:

202

203 **Agency" means all boards, commissions,**
204 **departments, divisions, institutions, authorities, or**
205 **parts thereof, of the Commonwealth or its political**
206 **subdivisions and includes the offices of**
207 **constitutional officers.**

208

209 b. Virginia Code § 42.1-77 **"Electronic record" means**
210 **a public record whose creation, storage, and access**
211 **require the use of an automated system or device.**
212 **Ownership of the hardware, software, or media used**
213 **to create, store, or access the electronic record has**
214 **no bearing on a determination of whether such**
215 **record is a public record;**

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"Public official" / "Custodian"
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218 Virginia Code § 42.1-77 **"Public official" means all**
219 **persons** holding any office created by the Constitution of
220 Virginia or by any act of the General Assembly, the

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221 Governor and **all other officers** of the executive branch
222 of the state government, and **all other officers, heads,**
223 **presidents or chairmen of boards, commissions,**
224 **departments, and agencies of the state government**
225 **or its political subdivisions.**

226

227 Under Code § 2.2-3701 **the definition of "public body" is**
228 **extended to any committee, subcommittee, or other**
229 **entity however designated, of the public body created**
230 **to perform delegated functions of the public body or to**
231 **advise the public body. It shall not exclude any such**
232 **committee, subcommittee or entity because it has**
233 **private sector or citizen members.** *Beck v. Shelton*, 267
234 Va. 482, 482, 593 S.E.2d 195, ____ (2004)

235
236 **This provision of Code § 2.2-3701 simply includes**
237 **committees, subcommittees, or entities within the**
238 **types of public bodies covered by FOIA, irrespective of**
239 **participation by private sector or citizen members.** It
240 does not expand the meaning of "members" in the definition
241 of "meetings" also contained in Code § 2.2-3701.
242 Furthermore, the city council does not have private sector or
243 citizen members and did not use a committee or
244 subcommittee structure. The full body or a quorum of the city
245 council cannot logically be presumed to be a committee or
246 subcommittee of itself. [Page 483] *Beck v. Shelton*, 267 Va.
247 482, 482-483, 593 S.E.2d 195, ____ (2004)

248
249 **The FOIA deals with public access to records and**
250 **meetings of public bodies. There is no question that e-**
251 **mails fall within the definition of public records under**
252 **Code § 2.2-3701** *Beck v. Shelton*, 267 Va. 482, 483, 593
253 S.E.2d 195, ____ (2004)

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Virginia Code § 42.1-77 **"Custodian" means the public official in charge of an office having public records.**

Constitutional Officers

Virginia Code § 2.2-3701 For the purposes of the provisions of this chapter applicable to access to public records, **constitutional officers shall be considered public bodies** and, except as otherwise expressly provided by law, **shall have the same obligations to disclose public records as other custodians of public records.**

Records Sought Are Authorized to Be Released VIA Federal and State Law Which Laws Are as Follows:

To this end, UARF and the undersigned [we / I / us] are here today and would like to examine records Northampton County Commonwealth Attorney maintains, accordingly, pursuant to [1] the 1st (1st adm.)

The Constitution of the United States of America 1st Amendment (1791)

Freedom of Religion, of Speech, and of the Press. -- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.;**

and [2] the 14th (14th adm.)

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**The Constitution of the United States of America
14th Amendment., § 1 (1868)**

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**amendments of the Constitution of the United States (CR or
Constitutional Rights), and [3] Article 1, Sec. 12 of the
Constitution of Virginia (Art. 1~12 CVA);**

Virginia Constitution, Bill of Rights, Art. 1 § 12 (1971)

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**Section 12. Freedom of speech and of the press; right
peaceably to assemble, and to petition. c That the
freedoms of speech and of the press are among the great
bulwarks of liberty, and can never be restrained except
by despotic governments; that any citizen may freely
speak, write, and publish his sentiments on all subjects,
being responsible for the abuse of that right; that the
General Assembly shall not pass any law abridging the
freedom of speech or of the press, nor the right of the
people peaceably to assemble, and to petition the**

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government for the redress of grievances.

the state open records law [4] [The Virginia Freedom of Information Act] (VFOIA or FOIA), Va. Code Ann. Sec. 2.2-3700 to 2.2-3714, and the promulgations of [5] the Virginia Public Records Act, Va. Code Ann. Sec. §§ 42.1-76 c 42.1-91 (VPRA), [6] Virginia Attorney General Opinion 15-052 ~ Bundick at pages 3 to page 5 (VAGO 15-052), [7] the Virginia Government Data Collection and Dissemination Practices Act, Va. Code Ann. Sec. §§ 2.2-3800 c 2.2-3809 (VGDCDPA or VGD), the Unalienable Rights Foundation, David M. Lindsey [Lindsey], individually and personally and a citizen of this Commonwealth who resides in Virginia Beach, Virginia, Robert Meyers individually and personally and a citizen of this Commonwealth who resides in Northampton County, Virginia and William Graham, individually and personally and a citizen of this Commonwealth who resides in Parksley, Virginia (we/us/I), are asking you as the Northampton County Commonwealth Attorney (Custodian ~ means the public official in charge of an office having public records. CODE §42.1-77) :

Title 1 General Provisions

Chap. 2.1 Common Law and Rules of Construction, §§ 1-200 c 1-257

Art. 2 Rules of Construction and Definitions, §§ 1-202 c 1-257

§ 1-213. Delegation of duties assigned to political subdivision. c The governing body of a political subdivision shall be responsible for any duty or responsibility imposed upon its political subdivision.
(1986, c. 239, § 1-17.2; 1987, c. 471; 1988, c. 273; 2005, c. 839.);

As first set out above we ask you or your deputy to provide records for our inspection this day as we personally appear before you or your deputy relating to Northampton County Commonwealth Attorney, **UARF, Meyers, Graham**

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and Lindsey request that you provide the documents found in EXHIBIT C attached hereto to for the persons named in EXHIBIT B attached hereto in accordance with Virginia Code §2.2-3704.A.:

Public Records Shall Be Open to Inspection and Copying

I. Virginia Code §2.2-3704.A.:

Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian ["Custodian" means the public official in charge of an office having public records. Virginia Code § 42.1-77] of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth . . .;

Virginia Code § 2.2-3700.B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted.

Virginia Code § 2.2-3700.B. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government.

Virginia Code § 2.2-3700.B. **Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute**, every meeting shall be open to the public **and all public records shall be available for inspection and copying upon request.**

Virginia Code § 2.2-3700.B. **All public records** and meetings **shall be presumed open, unless an exemption is properly invoked.**

II. Virginia Code § 42.1-86.A.:

. . . **[t]he head of each agency, . . . [s]hall establish and maintain a program for the selection and preservation of essential public records. The program shall provide for preserving, classifying, arranging, and indexing essential public records**[Virginia Code § **42.1-77 "Essential public record" means records that are required** for recovery and reconstruction of any agency to enable it to resume its core operations and functions and **to protect the rights and interests of persons.] so that such records are made available to the public. . . .**

The Unalienable Rights Foundation, Robert Meyers [personally and individually] and David M. Lindsey [personally and individually], further request, pursuant to the state open records law, the Virginia Freedom of Information Act, Va, Code Ann, Sec. 2.2-3700 through 2.2-3714 (FOIA), and the promulgations of the Virginia Public Records Act, §§ 42.1-76 c 42.1-91, that you, as NHC County Commonwealth Attorney, **give us access to records, both hand written/prepared and electronic** relating to Northampton County Commonwealth Attorney, **UARF, Meyers, Graham and Lindsey are requesting to examine the** Ninety-Nine [99] categories of documents [This includes copies of any electronic mail or other requested

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information maintained in electronic form] for the period beginning January
November 15, 2008 to date shown on EXHIBIT C:

**Where The Public Records We Want to Examine
Should Be and Maintained**

Virginia Code § 42.1-87 **A. Custodians of archival public records shall keep them in fire-resistant, environmentally controlled, physically secure rooms designed to ensure proper preservation and in such arrangement as to be easily accessible. Current public records should be kept in the buildings in which they are ordinarily used.**

There is no case law that relates to Code § 42.1-87 and any court action on this matter as a result of this request would be a matter of first impression in this Commonwealth. There is however a Virginia Attorney General Opinion on the subject that was issued pursuant to an UARF VFOIA request to the Treasurer of Accomack County (12-05 Bundick) that can guide you (as a result of our public service):

Pg. 3, & 1:

II. Records Storage and Retention

"[T]o establish a single body of law applicable to all public officers ... [for] public records management and preservation ... [,]"⁸ the General Assembly enacted the Virginia Public Records Act ("Records Act"). The Records Act provides, with respect to where records used in the transaction of business should be located, that "[c]urrent public records should be kept in the buildings in which they are ordinarily used." Thus, a treasurer's records should be stored where his offices are located. The Records Act further directs the Library of Virginia ("LVA") to "establish procedures and techniques for the effective management of public records." All agencies, including constitutional officers, holding public records are required to comply with any applicable LVA records retention and disposition schedules. The LVA, in General Schedule No. GS-28, has issued a records retention and disposition schedule applicable to county treasurers. This schedule comprehensively lists the retention period and disposition method for various types of records." I therefore conclude that a treasurer should abide by

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438 this schedule in retaining and disposing of his records.

439
440 Pg. 4, & 4, (2) - pg. 5:

441 [t]he records of a county treasurer must be located in the same building as that
442 county treasurer's office, and such records must be retained according to the LV
443 A's records retention and disposition schedules applicable to county treasurers;
444

445 **T**hese requests have been directed to you as the Northampton County
446 Commonwealth Attorney's Office as it appears it is your duty to comply with
447 our request under Virginia Code.
448

449 **T**o be clear, we do not expect any of Northampton County
450 Commonwealth Attorney's Office's nor want Northampton County
451 Commonwealth Attorney's office to search through all of those electronic
452 records or boxes of Northampton County Commonwealth Attorney's office's
453 records - we don't want to put Northampton County Commonwealth
454 Attorney's office out. Therefore, there will not be a need for Northampton
455 County Commonwealth Attorney's offices to search through all of those
456 electronic records and boxes of Northampton County Commonwealth
457 Attorney offices' records as Graham, Meyers, Lindsey and UARF Forensic
458 Evidence Teams and Civil Rights Case Management Teams will do all the
459 searching and copying of the records requested in this FOIA request
460 pursuant to Virginia Code §2.2-3704.A. and Virginia Code §42.1-87.A.
461

462 Please advise me immediately when and where these records will be
463 available.
464

**Request to Be Provided With All Cost
To be Charged In Advance**

465
466 UARF and Lindsey also request **to be provided with an *itemized***

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schedule of any/all charges [each one and all; with no exception] related to this request [Virginia Code § 2.2-3704.F.] including (1) the statutory authority for each and every charge, (2) the charges for copying each item/material that I may request a copy of during and after my examination of the items herein requested for examination [please provide in the schedule all segregable portions of otherwise exempt material].

Any charges/fees charged by you under the color of VFOIA § 2.2-3704.F. for searching/looking for public records that are to be maintained under VPRA § 42.1-86.A. [. . . shall provide for preserving, classifying, arranging, and indexing essential public records so that such records are made available to the public] is viewed by UARF, Meyers, Graham and Lindsey [1] as a violation of their civil rights, "public's right to know and the media's right of access" as set out and pursuant to the First and Fourteenth Amendments to the United States Constitution, and Article I, Section 12 of the Virginia Constitution, VFOIA and the VPRA § 42.1-86.A. and **[2] that the Agency's Director and employees and agents assessment for any fees for its duties set out under VPRA §42.1-86.A. are malfeasance, misfeasance, and nonfeasance of office/duties under the colour of VA. Code Section 2.2-3704.F.**

Va. Constitution Va. Con. Art. 1 § 12 (1971) That the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; **that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances.**

VA. Code §2.2-3704.F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or

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500 searching for the requested records. **No public body shall impose any**
501 **extraneous [adjective 1 irrelevant or unrelated to the subject. 2 of**
502 **external origin. -DERIVATIVES extraneously >adverb**
503 **extraneousness >noun. -ORIGIN Latin extraneus / Oxford**
504 **University Press Dictionary, 2012], intermediary [] or surplus fees**
505 **or expenses to recoup the general costs associated with creating**
506 **or maintaining records or transacting the general business of the**
507 **public body. Any duplicating fee charged by a public body shall not**
508 **exceed the actual cost of duplication.** The public body may also make
509 a reasonable charge for the cost incurred in supplying records produced
510 from a geographic information system at the request of anyone other than
511 the owner of the land that is the subject of the request. **However, such**
512 **charges shall not exceed the actual cost to the public body in**
513 **supplying such records,** except that the public body may charge, on a
514 pro rata per acre basis, for the cost of creating topographical maps
515 developed by the public body, for such maps or portions thereof, which
516 encompass a contiguous area greater than 50 acres. **All charges for the**
517 **supplying of requested records shall be estimated in advance at**
518 **the request of the citizen.**
519

**Virginia Courts Have Addressed Allowed Expenses Under
Virginia Code §2.2-3704.F.**

520
521 **. . . [C]ode § 2.2-3704(F) does not grant a public body**
522 **the authority for charging for the costs of reviewing or**
523 **redacting records. This simply is not in the statute nor is**
524 **there any implication from the statute that this can be**
525 **recovered. *Albright v. Woodfin*, 24 Cir. CL050006, 68 Va.**
526 **Cir. 115 (2005)**
527

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528

**Virginia Code §2.2-3704.B. allows for the following response
to this FOIA request**

529

530 Virginia Code §2.2B. **Any public body that is subject to this chapter**
531 **and that is the custodian of the requested records shall promptly,**
532 but in all cases within five working days of receiving a request, **provide**
533 **the requested records to the requester or make one of the**
534 **following responses in writing:**

535

536 1. The requested records are being entirely withheld because their
537 release is prohibited by law or the custodian has exercised his
538 discretion to withhold the records in accordance with this chapter. Such
539 response shall identify with reasonable particularity the volume and
540 subject matter of withheld records, and cite, as to each category of
541 withheld records, the specific Code section that authorizes the
542 withholding of the records.

543

544 2. The requested records are being provided in part and are being
545 withheld in part because the release of part of the records is prohibited
546 by law or the custodian has exercised his discretion to withhold a
547 portion of the records in accordance with this chapter. Such response
548 shall identify with reasonable particularity the subject matter of
549 withheld portions, and cite, as to each category of withheld records, the
550 specific Code section that authorizes the withholding of the records.
551 When a portion of a requested record is withheld, the public body may
552 delete or excise only that portion of the record to which an exemption
553 applies and shall release the remainder of the record.

554

555 3. The requested records could not be found or do not exist.
556 However, if the public body that received the request knows that
557 another public body has the requested records, the response shall
558 include contact information for the other public body.

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4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days in which to provide one of the four preceding responses.

The Response you make in accordance with the requirements of VA Code § 2.2-3704.B is a Public Record

Your response to this FOIA request you make in accordance with the requirements of VA Code § 2.2-3704.B is a Public Record and as such is subject to VA Code § 18.2-168, and § 18.2-172;

§ 18.2-168. Forging public records, etc. c If any person forge a public record, or certificate, return, or attestation, of any public officer or public employee, in relation to any matter wherein such certificate, return, or attestation may be received as legal proof, or utter, or attempt to employ as true, such forged record, certificate, return, or attestation, knowing the same to be forged, he shall be guilty of a Class 4 felony. (Code 1950, § 18.1-92; 1960, c. 358; 1975, cc. 14, 15; 1976, c. 146.)

[the Supreme Court of Virginia concluded, after an extensive review of the history of the common law offenses of forging a public document and forging private papers, that actual prejudice to the public's ownership rights is not a necessary element of the crime of forging a public document. *Campbell v. Commonwealth*, 246 Va. 174, 179-82, 431 S.E.2d 648, 651-53 (1993). The Court noted:

"At Common Law the Counterfeiting a Matter of Record is Forgery; for since the

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Law gives the highest Credit to all Records, it cannot but be of the utmost ill Consequence to the Publik to have them either forged or falsified." 2

Matthew Bacon, *Abridgment* *568 (1786).

The common-law crime of forgery of public records, a capital offense in England, was augmented by statutes punishing the lesser offense of forgery of certain private documents. See, e.g., An

Act Concerning Counterfeit Letters or Privy Tokens to Receive Money or Goods in Others Men's Names, 1541-42, 33 Hen. VIII, ch. 1 (Eng.). Unlike **the crime of forgery of public records in which "ill Consequence to the Publik" was conclusively presumed**, and unlike the common-law crime of forgery of private papers in which proof of *potential* harm or prejudice to another was required, conviction of the several statutory offenses generally required proof of *actual* harm or prejudice to the rights of another person. See 1 Hawkins at 263 n. 1; 2 Bacon at *568. [Page 757]

Id. at 179-80, 431 S.E.2d at 651 (emphasis in original). **The Court further reviewed the legislative history and the scheme of the Virginia forgery statutes and concluded "that harm or prejudice to the right of another person has never been and is not now an element of the crime of forgery of public records in this**

Commonwealth.” *Id.* at 184, 431 S.E.2d at 654.

As the crime of forgery of a public document does not require personal loss of ownership, appellant's comparison to larceny is inapposite. Therefore, we will not extend the single larceny doctrine to cases involving Code § 18.2-168.

Additionally, the language and structure of the Code prove the legislature intended to allow multiple forgery convictions in situations such as the one before us. Code § 18.2-168 states:

If any person forge a public record, or certificate, return, or attestation, of any public officer or public employee, in relation to any matter wherein such certificate, return, or attestation may be received as legal proof, or utter, or attempt to employ as true, such forged record, certificate, return, or attestation, knowing the same to be forged, he shall be guilty of a Class 4 felony.

(Emphasis added.) While criminal statutes must be construed strictly against the Commonwealth and in favor of the accused, *Johnson v. Commonwealth*, 211 Va. 815, 819, 180 S.E.2d 661, 664 (1971), **when the language of a statute is clear and unambiguous, a court will give the statute its plain meaning, *Tross v. Commonwealth*, 21 Va. App. 362, 377-78, 464 S.E.2d 523, 530 (1995).** We also note, “**The legislature in its discretion may determine the appropriate ‘unit of prosecution’ and set the penalty for separate**

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violations." *Jordan v Commonwealth*, 2 Va. App. 590, 594, 347 S.E.2d 152, 154 (1986). An analysis of the concept of "a public record" and a summons proves the legislature intended to allow multiple prosecutions for contemporaneous forgeries of such documents. [Page 758]

At common law, a public record was "a written memorial, intended to serve as evidence of something written, said or done, made by a public officer authorized to make it." *Reid v. Commonwealth*, 16 Va. App. 468, 470, 431 S.E.2d 63, 64 (1993) (citing *Coleman v. Commonwealth*, 66 Va. (25 Gratt.) 865, 881-82 (1874)).

Under the Virginia Public Records Act, a public record is defined as:

recorded information that documents a transaction or activity by or with any public officer, agency or employee of the state government or its political subdivisions. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business. Code § 42.1-77.

§ 18.2-172. Forging, uttering, etc., other writings. c If any person forge any writing, other than such as is mentioned in §§ 18.2-168 and 18.2-170, to the prejudice of another's right, or utter, or attempt to employ as true, such forged writing, knowing it to be forged, he shall be guilty of a Class 5 felony. Any person who shall obtain, by any false pretense or token, the signature of another person, to any such writing, with intent to defraud any other person, shall be deemed guilty of the forgery thereof, and shall be subject to like punishment. (Code 1950, § 18.1-96; 1960, c. 358; 1975, cc. 14, 15.);

Code § 18.2-172, codifying the common law crime of forgery, provides that "[i]f any person forge any writing, . . . to the prejudice of another's right, . . . [she] shall be guilty of a Class 5 felony." Under the common law, forgery is defined as 'the false making or materially altering with intent to defraud, or any writing which, if genuine, might apparently be of legal efficacy, or the foundation of legal liability.'" *Fitzgerald v. Commonwealth*, 227 Va. 171, 173-74, 313 S.E.2d 394, 395 (1984) (quoting *Bullock v. Commonwealth*, 205 Va. 558, 561, 138 S.E.2d 261, 263 (1964)). *Timbers v. Commonwealth*, 28 Va. App. 187, 202, 503 S.E.2d 233, ____ (1998);

"The purpose of the statute against forgery is to protect society against the fabrication, falsification and the uttering of instruments which *might* be acted upon as being genuine." *Muhammad*, 13 Va. App. at 199, 409 S.E.2d at 821 (quoting *Mayes v. State*, 571 S.E.2d 420, 427 (Ark. 1978)) (emphasis in original).

This argument is flawed because it does not accurately portray the case law. Actual prejudice is not required. As we have already noted, to uphold a conviction under Code § 18.2-172, the evidence must show only the possibility that the forged instrument may operate to the prejudice of another's right. See *Gordon*,

100 Va. at 829, 41 S.E. at 748; *Muhammad*,
13 Va. App. at 196-97, 409 S.E.2d at 819-20.
Beshah v. Commonwealth, 60 Va. App. 161,
171, 725 S.E.2d 144, ____ (2012)

Appellant was convicted of forgery under
Code § 18.2-172, which provides that "[i]f
any person forge any writing . . . to the
prejudice of another's right . . . , [that
person] shall be guilty of a Class 5 felony."
**The General Assembly codified the
English common law of forgery when it
enacted Code § 18.2-172. See *Campbell v.*
Commonwealth, 246 Va. 174, 182-83, 431
S.E.2d 648, 653 (1993). *Beshah v.*
Commonwealth, 60 Va. App. 161, 169, 725
S.E.2d 144, ____ (2012)**

**Forgery is "[t]he act of fraudulently making a
false document or altering a real one to be
used as if genuine." *Black's Law Dictionary* 677
(8th ed. 1999). *McQuinn v. Commonwealth*, 09
Vap UNP 0404082 (2009)**

**"Code § 18.2-172 provides, in pertinent part,
that, '[i]f any person forge any writing . . . to
the prejudice of another's right, or utter, or
attempt to employ as true, such forged writing,
knowing it to be forged, he shall be guilty of a
Class 5 felony.'" *Oliver v. Commonwealth*, 35 Va.
App. 286, 295, 544 S.E.2d 870, 874 (2001) (quoting
Fitzgerald v. Commonwealth, 227 Va. 171, 173-74,
313 S.E.2d 394, 395 (1984)). "To sustain a
conviction for forgery in violation of Code § 18.2-**

172, the Commonwealth **must prove that the accused falsely made or materially altered a writing, without the authority to do so, and did so to the prejudice of another's right."** *Bowman v. Commonwealth*, 28 Va. App. 204, 213, 503 S.E.2d 241, 245 (1998). *Wooding v. Commonwealth*, 10 Vap UNP 1385093 (2010)

Code § 18.2-172 provides "If any person . . . utter, or attempt to employ as true, such forged writing, knowing it to be forged, he shall be guilty of a Class 5 felony." In order to sustain a conviction, Code § 18.2-172 requires that the person who utters a check know that it is forged. "The word 'utter' is defined in Black's Law Dictionary, 4th ed., page 1716, as meaning 'To put or send [as a forged check] into circulation' It is an assertion by word or action that a writing known to be forged is good and valid." *Bateman v. Commonwealth*, 205 Va. 595, 599-600, 139 S.E.2d 102, 106 (1964). "[A]ny assertion or declaration, by word or act, directly or indirectly, that the forged writing or endorsement is good, with such knowledge and intent is an uttering . . ." *Sands v. Commonwealth*, 61 Va. (20 Gratt.) 800, 823 (1871). *Massengale v. Commonwealth*, 08 Va. S. Ct. UNP 070746 (2008)

[C]ode § 18.2-172 provides that it is unlawful to forge 'any writing' or to utter such forged writing knowing it to be forged. Forgery "is defined as 'the false making or materially altering with the intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy, or the foundation of legal liability.'" *Fitzgerald v. Commonwealth*, 227 Va.

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171, 173, 313 S.E.2d 394, 395 (1984) (quoting *Bullock v. Commonwealth*, 205 Va. 558, 561, 138 S.E.2d 261, 263 (1964)) (affirming convictions for forgery of blank checks stolen from a business). *McQuinn v. Commonwealth*, 09 Vap UNP 0404082 (2009)

At common law, the crime of forgery "is defined as 'the false making or materially altering with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy, or the foundation of legal liability.'" *Fitzgerald v. Commonwealth*, 227 Va. 171, 173, 313 S.E.2d 394, 395 (1984) (quoting *Bullock v. Commonwealth*, 205 Va. 558, 561, 138 S.E.2d 261, 264 (1964)). A document or instrument is one of legal efficacy "where by any possibility it may operate to the injury of another." *Gordon v. Commonwealth*, 100 Va. 825, 829, 41 S.E. 746, 748 (1902) (emphasis added). Therefore, to sustain a conviction under the modern forgery statute, the Commonwealth **must prove that the forged or altered document operated to the actual or potential prejudice of another. See *Muhammed v. Commonwealth*, 13 Va. App. 194, 199, 409 S.E.2d 818, 821 (1991) **(holding that the "bare possibility" of prejudice is sufficient under Code § 18.2-172)**.**

To prove a forgery under the statute, the Commonwealth was required to prove only that the forged document had the potential to operate "to the prejudice of another." Code § 18.2-172. "The purpose of the statute against forgery is to protect society against the fabrication, falsification and the uttering of instruments which *might* be acted upon as being genuine." *Muhammad*, 13 Va. App. at 199, 409 S.E.2d at 821

(quoting *Mayes v. State*, 571 S.E.2d 420, 427 (Ark. 1978)) (emphasis in original). *Beshah v. Commonwealth*, 60 Va. App. 161, 169, 725 S.E.2d 144, ____ (2012)

We will also be looking at your response under the guidelines set out in Code §§ 18.2-460 c 18.2-472.1, Interference with Administration of Justice.

In your response please be sure to preserve your rights as stated/provided for in the 5th. amendment to the U.S. Constitution and Art. 1, Sec. 8 of the Virginia Constitution.

Please be advised that if it is less expensive, labor intensive, and more convenient to you, we will be happy to accept the requested materials in electronic format, including .pdf, .gif, .jpg, Word, Word for Windows, WordPerfect, and Mac formats via email to general.counsel@uarf.us, or you can mail on a CD or DVD to UARF, P.O. Box 65002, Virginia Beach, VA, 23467-5002.

If you do not maintain these public records, please let me know who does and include the proper custodian's name and address.

In addition, if you refuse the above request please provide a written explanation for your refusal including the (1)reference to the specific statutory exemption(s) upon which you rely, (2)Any opinion of the Attorney General that supports your position(s), and (3) any decision of a court that supports your position(s) that the material requested under this FOIA request is exempted from disclosure under the provision of FOIA [Virginia Code § 2.2-3713.D.]-please provide a schedule of all segregable portions of any material you otherwise claim as

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exempt.

If you claim the documents do not exist please advise UARF, Meyers, Graham and Lindsey of the same in writing.

Take notice that UARF, Meyers, Graham and Lindsey will deem your failure supply the records this day or to reply [Virginia Code § 2.2-3704.E.] within the statutory time of five (5) days to be a denial of our request and will seek enforcement of our request by filing a petition for writ of mandamus and/or injunction under Virginia Code Section § 2.2-3127, including requests for attorneys= fees and cost for enforcing our rights under FOIA, of the Commonwealth of Virginia.

PRESERVATION NOTICE

Please be advised that the Unalienable Rights Foundation [UARF] William Graham, personally and individually [Graham], Robert Meyers, personally and individually [Meyers] and David M. Lindsey, personally and individually [Lindsey], believes manual and electronically stored information to be an important and irreplaceable source of data related to the documents/records they have requested from you and Northampton County Commonwealth Attorney or its employees under The Virginia Freedom of Information Act [FOIA] and the other promulgations of both the Federal and Virginia State Governments and in any matter that may subsequently evolve as a result of these request including any litigation related to these requests.

The subject matter(s) of these FOIA requests requires preservation of all information from the persons named on the Attached Exhibit B or their employees along with the subjects matters named on the Attached Exhibit C which shall include those named in attached Exhibit B or their employees, family, contractors and is not limited to all of their computer systems, computers, removable electronic media used by them at any other locations.

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Under the laws of this Commonwealth and the Federal Rules of Civil Procedures [FRCP], more particularly the guidelines set out by the Hon. Shira A. Scheindlin, Judge, United States District Court for the Northern District of New York, issued five groundbreaking opinions in the case of Zubulake v. UBS Warburg. Zubulake is generally considered the first definitive case in the United States on a wide range of electronic discovery issues:

Zubulake I, May 13, 2003: Zubulake v. UBS Warburg, 217 F.R.D. 309 (S.D.N.Y. 2003).

Zubulake II (Please note: this does not relate to electronic disclosure): Zubulake v. UBS Warburg, No. 02 Civ. 1243, 2003 WL 21087136 (S.D.N.Y. May 13, 2003).

Zubulake III, July 24, 2003: Zubulake v. UBS Warburg, 216 F.R.D. 280 (S.D.N.Y. 2003).

Zubulake IV, October 22, 2003: Zubulake v. UBS Warburg, 220 F.R.D. 212 (S.D.N.Y. 2003).

Zubulake V: Zubulake v. UBS Warburg, 2004 WL 1620866 (S.D.N.Y. July 20, 2004).

You should also look to Sekisui American Corp. v. Hart, Case 1:12-cv-03479-SAS-FM, slip op. at 14 & n. 51 (S.D.N.Y. August 15, 2013) for complying with the FRCP.

You must preserve the items requested by this notice even if you or your legal counsel(s) feel these items are exempt from the FOIA request.

It does not mater if you believe the material is exempt from the FOIA request as ultimately the court(s) will decide the application of statutory exemptions to the requested materials.

924 The material requested to be preserved includes, but is not limited to:

925 Email and instant messages or other electronic communication,
926 word processing documents, spreadsheets, databases, calendars,
927 web camera logs and images, contact manager information,
928 Internet usage files, and network access information - any
929 representation of words, letters, symbols, numbers, or figures,
930 whether (i) printed or inscribed on a tangible medium or (ii) stored
931 in an electronic or other medium and retrievable in a perceivable
932 form and whether an electronic signature authorized by the Code in
933 Chapter 42.1 (§ 59.1-479 et seq.) of Title 59.1 is or is not affixed.

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935 You should also preserve the following platforms in your possession or a third party
936 under the control of you (such as an friends, boy friends, girl friends, neighbors,
937 employers or family members [associates]): databases, networks, computer systems,
938 including legacy systems (hardware and software), servers, archives, backup or disaster
939 recovery systems, tapes, discs, drives, cartridges and other storage media, laptops,
940 personal computers, internet data, personal digital assistants (PDA), handheld wireless
941 devices, mobile telephones, paging devices, and audio systems (including voicemail).

942
943 All of the information contained in this letter should be preserved from Northampton
944 County Commonwealth Attorney's inception to the present.
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PRESERVATION OBLIGATIONS

Virginia Code § 42.1-86.1 A. No agency shall sell or give away public records. **No agency shall destroy or discard a public record unless** (i) the record appears on a records retention and disposition schedule approved pursuant to § 42.1-82 and the record's retention period has expired; (ii) a certificate of records destruction, as designated by the Librarian of Virginia, has been properly completed and approved by the agency's designated records officer; and (iii) **there is no litigation, audit, investigation, request for records pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.),** or renegotiation of the relevant records retention and disposition schedule pending at the expiration of the retention period for the applicable records series. After a record is destroyed or discarded, the agency shall forward the original certificate of records destruction to The Library of Virginia.

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The laws and rules prohibiting destruction of documents and/or evidence apply to manually prepared and stored documents as well as electronically stored information in the same manner that they apply to other documents and/or evidence. Due to its format, electronic information is easily deleted, modified or corrupted. Accordingly, you must take every reasonable step to preserve this information until the final resolution of this matter.

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This includes [Virginia Code 1-218 Text in effect from and after October 1, 2005, Title 1 General Provisions, Chap. 2.1 Common Law and Rules of Construction, §§ 1-200 c 1-257, Art. 2 Rules of Construction and Definitions, §§ 1-202 c 1-257, "Includes" means includes, but not limited to.], but is not limited to, an obligation to:

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- Discontinue all data destruction and backup tape recycling policies;
- Preserve and not dispose of relevant hardware;
- Preserve and not destroy passwords, decryption procedures (and accompany software), network access codes, ID names, manuals, tutorials, written instructions, decompression

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or reconstruction software;

- Maintain all other pertinent information and tools needed to access, review, and reconstruct necessary to access, view, and/or reconstruct all requested or potentially relevant electronic data.

FURTHER DESCRIPTION OF DATA SOUGHT

The FOIA request requires preservation of all information from your computer systems and computers systems you used, removable electronic media and other locations relating to the FOIA request. This includes, but is not limited to, email, instant messages, and other electronic communication, word processing documents, spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, web camera logs or files, network access information, photographs, images, and video clips or movies.

I. Electronic Files. You have an obligation to preserve all digital or analog electronic files in electronic format, regardless of whether hard copies of the information exist. This includes preserving:

- A. Active data (i.e., data immediately and easily accessible on Northampton County Commonwealth Attorney's, the individuals named in EXHIBIT B or your computer systems today);
- B. Archived data (i.e., data residing on backup tapes or other storage media);
- C. Deleted data (i.e., data that has been deleted from a computer hard drive but is recoverable through computer forensic techniques); and
- D. Legacy data (i.e., data created on old or obsolete hardware or software).
- E. You must preserve active, archived and legacy data including but not limited to:
 1. Word-processed files, including drafts and revisions;
 2. Spreadsheets, including drafts and revisions;
 3. Databases;
 4. CAD (computer-aided design) files, including drafts and revisions;
 5. Presentation data or slide shows produced by presentation software (such as Microsoft PowerPoint);
 6. Graphs, charts and other data produced by project management software (such as Microsoft Project);

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7. Animations, images, audio, video and audiovisual recordings, MP3 players, and voicemail files.

8. Data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook or Lotus Notes);

9. Data created with the use of personal data assistants (PDAs), such as PalmPilot, HP Jornada; Cassiopeia or other Windows CE-based or Pocket PC devices;

10. Data created with the use of document management software; and

11. Data created with the use of paper and electronic mail logging and routing software.

F. You must preserve media used by you or your computers and computers used by Northampton County Commonwealth Attorney, persons name in EXHIBIT B or you including but not limited to:

1. Magnetic, optical or other storage media, including the hard drives or floppy disks used by you or your computers;

2. Backup media (i.e., other hard drives, backup tapes, floppies, Jazz cartridges, CD-ROMs) and the software necessary to reconstruct the data contained on the media; and

3. Archived media (you should retain a mirror image copy of any media no longer in service but used from Northampton County Commonwealth Attorney's inception to the present.

II. Hardware. You have an obligation to preserve all electronic processing systems, even if they are replaced. This includes computer servers, stand-alone personal computers, hard drives, laptops, PDAs, and other electronic processing devices. You should retain copies of any hardware no longer in service but used from Northampton County Commonwealth Attorney's inception to the present.

III. Emails. You have an obligation to preserve all potentially relevant internal and external emails that were sent or received. Email must be preserved in electronic format, regardless of whether hard copies of the information exist.

IV. Internet Web Activity. You have an obligation to preserve all records of Internet and Web-browser generated files in electronic format, regardless of whether hard copies of the information exist. This includes Internet and Web-browser-generated history files, caches and "cookies" files stored on backup media.

V. Activity Logs. You must preserve all hard copy or electronic logs documenting computer(s) use by you.

VI. Supporting Information. You must preserve all supporting information relating to the requested electronic data and/or media including:

A. Codebooks, keys, data dictionaries, diagrams, handbooks, or other supporting documents that aid in reading or interpreting database, media, email, hardware, software, or activity log information.

DESCRIPTION OF DOCUMENTS AND MEDIA THAT SHOULD BE PRESERVED

I. Data Preservation. You should immediately preserve all data and information about the data (i.e., backup activity logs and document retention policies) relating to documents maintained in the ordinary course of computer operation for the individuals listed below. This includes, but is not limited to, the information listed below.

A. Email and any relevant metadata, including message contents, header information, and email system logs that was sent or received by or is in the possession of the following parties including those maintained on PDAs and/or cellular phones and/or contains information about the following subjects:

1. Parties named on Attached Exhibit B or any other person(s) these matters were discussed with.

2. Subject Matters:

Those items given in attached Exhibit C and in the previous FOIA request to Northampton County Commonwealth Attorney and its representatives by whatever name they might be called and those given herein.

B. Instant Messages and or Text Messages and any relevant metadata, including message contents, header information, and message system logs that was sent or received by or is in the possession of the following parties and/or contains information about the following subjects:

1. Parties named in attached EXHIBIT B or Any other person(s) these matters were discussed with:

2. Subject Matters:

Those items given in EXHIBIT C and previous FOIA request to Northampton County Commonwealth Attorney and its representatives by whatever names they might be called and those given herein.

C. All active and deleted copies of any word processing files, spreadsheets, PowerPoint presentations, or other documents that are in the possession of the following parties and/or contain information about the following subjects:

1. Parties: Parties named in attached EXHIBIT B or Any other person(s) these matters were discussed with:

2. Subject Matters:

Those items given in EXHIBIT C and previous FOIA request to Northampton County Commonwealth Attorney and its representatives by whatever names they might be called and those given herein.

D. Databases and any information about the databases that are in the possession of the following parties and/or contain information about the following subjects:

1. Parties: Parties named in attached EXHIBIT B or Any other person(s) these matters were discussed with:

2. Subject Matters:

Those items given in EXHIBIT C and previous FOIA request to Northampton County Commonwealth Attorney and its representatives by whatever names they might be called and those given herein.

EXHIBIT A ~ VFOIA Request To: Bruce Jones / Commonwealth's Attorney
P.O. Box 690 / Eastville, VA 23347

1098 E. All paper and/or electronic logs of computer system and network activity that pertain
1099 to electronic data storage that are in the possession of the following parties and/or contain
1100 information about the following subjects:

1101 1. Parties: Parties named in attached EXHIBIT B or Any other person(s) these
1102 matters were discussed with:

1103
1104 2. Subject Matters:
1105 Those items given in EXHIBIT C and previous FOIA request to
1106 Northampton County Commonwealth Attorney and its representatives by
1107 whatever names they might be called and those given herein.
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1109 F. All active and deleted copies of any electronic calendars or scheduling programs,
1110 including programs maintained on PDAs, that are in the possession of the following
1111 parties and/or contain information about the following subjects:

1112
1113 1. Parties: Parties named in attached EXHIBIT B or Any other person(s) these
1114 matters were discussed with:

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1116 2. Subject Matters:
1117 Those items given in EXHIBIT C and previous FOIA request to Northampton
1118 County Commonwealth Attorney and its representatives by whatever names they
1119 might be called and those given herein.
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1121 G. All active, archived, legacy, and deleted copies of any other electronic data that are
1122 in the possession of the following parties and/or contain information about the
1123 following subjects:

1124 1. Parties: Parties named in attached EXHIBIT B or Any other person(s) these
1125 matters were discussed with:

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1127 2. Subject Matters:
1128 Those items given in EXHIBIT C and previous FOIA request to Northampton
1129 County Commonwealth Attorney and its representatives by whatever names they
1130 might be called and those given herein.
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II. Data Storage Devices

A. Online Data Storage. If you use(s) online storage and/or direct access storage devices, they must immediately cease modifying or deleting any electronic data unless a computer forensic expert makes a mirror image of the electronic file, follows proper preservation protocols for assuring the accuracy of the file (i.e., chain of custody), and makes the file available for litigation.

B. Offline Data Storage. Offline data storage includes, but is not limited to, backup and archival media, floppy diskettes, magnetic, magneto-optical, and/or optical tapes and cartridges, DVDs, CDROMs, and other removable media. You should immediately suspend all activity that might result in destruction or modification of all of the data stored on any offline media. This includes overwriting, recycling or erasing all or part of the media. This request includes, but is not limited to, media used to store data from personal computers, laptops, mainframe computers, and servers.

C. Data Storage Device Replacement. If you replace(s) any electronic data storage devices, you may not dispose of the storage devices.

D. Preservation of Storage Devices. You may not modify, delete or otherwise alter (i.e., by data compression, disk de-fragmentation, or optimization routines) any electronic data unless a computer forensic expert makes a mirror image of the electronic file, follows proper preservation protocols for assuring the accuracy of the file (i.e., chain of custody), and makes the file available for litigation. The expert must make a mirror image of active files, restored versions of deleted files, and restored versions of deleted file fragments, hidden files, and directory listings. This includes, but is not limited to, preserving electronic data (stored on online or offline storage devices) that came from the following hardware or software applications:

1. Fixed drives on stand-alone personal computers or laptops;
2. Network servers and workstations; and
3. Software application programs and utilities.

PRESERVATION COMPLIANCE

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I. Activity Log. In order to show preservation compliance, you must maintain a log, documenting all alterations or deletions made to any electronic data storage device or any electronic data processing system. The log should include changes and deletions made by you or any other third parties.

II. Mirror Images. You must secure a mirror image copy (a bit-by-bit copy of a hard drive that ensures the computer system is not altered during the imaging process) of all electronic data contained on the personal computers and/or laptops of the individuals listed below. The mirror image should include active files, deleted files, deleted file fragments, hidden files, directories, and any other data contained on the computer. You must also collect and store any offline or online storage devices that contain data from any electronic processing devices for the individuals listed in attached EXHIBIT B or Any other person(s) these matters were discussed with:

III. Chain of Custody. For each piece of media that you preserve(s), you must document a complete chain of custody. A proper chain of custody will ensure that no material changes, alterations or modifications were made while the evidence was handled. Chain of custody documentation must indicate where the media has been, whose possession it has been in, and the reason for that possession.

IV. Electronic and Manually Data/Records Created After This Letter. For any electronic and manually created data after this letter or for any electronic processing systems used after this letter, you must take the proper steps to avoid destroying potentially relevant evidence. This includes following the above preservation protocols.

Compliance with your preservation obligations includes forwarding a copy of this letter to all individuals or organizations that are responsible for any of the items referred to in this letter. If this correspondence is in any respect unclear, please call me immediately.

Take due notice thereof and govern yourself accordingly.

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Thank you for your assistance.

Sincerely,

David M. Lindsey

David M. Lindsey

President

and

David M. Lindsey

Personally and Individually

William Graham

William Graham

Civil Rights Case Manager

and

William Graham

Personally and Individually

Robert Meyers

Robert Meyers

Civil Rights Case Manager

and

Robert Meyers

Personally and Individually

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EXHIBIT B ~ PERSON[S] / INDIVIDUALS / ENTITIES REFERENCED
IN EXHIBIT "A" ATTACHED HERETO AS BEING IN EXHIBIT "B"

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1. Northampton County Clerk

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2. Northampton County Administrator

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3. Katherine H. Nunez

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4. Northampton County Attorney

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5. Northampton County Attorney for the Commonwealth

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6. The Hon. Bruce Jones

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7. Ms. Beverly Leatherbury

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EXHIBIT C ~ DOCUMENT(S) RECORD(S) REFERENCED IN EXHIBIT
"A" ATTACHED HERETO AS BEING IN EXHIBIT "C"

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1. Policies and procedures to comply with Virginia's "State and Local Government Act", including any provisions of Virginia Code, Attorney General opinions or Court Decision upon which you relied to formulate the policies and procedures;

2. Policies and procedures to comply with Virginia Codes Va. Code § 2.2-3126.B., third paragraph, including any provisions of Virginia Code, Attorney General opinions or Court Decision upon which you relied to formulate the policies and procedures;

Each attorney for the Commonwealth shall establish an appropriate written procedure for implementing the disclosure requirements of local officers and employees of his county, city or town, and for other political subdivisions, whose principal offices are located within the jurisdiction served by such attorney for the Commonwealth. The attorney for the Commonwealth shall provide a copy of this act to all local officers and employees in the jurisdiction served by such attorney who are required to file a disclosure statement pursuant to Article 5 (§ 2.2-3113 et seq.) of this chapter. Failure to receive a copy of the act shall not be a defense to such officers and employees if they are prosecuted for violations of the act.

3. Policies and procedures to comply with Virginia Codes Va. Code § 2.2-3100.1., including any provisions of Virginia Code, Attorney General opinions or Court Decision upon which you relied to formulate the policies and procedures.

4. For the Assistant Commonwealth's Attorney

a. Employment agreement/contract

b. Pay Schedule

c. Time Logs

d. Any provisions of Virginia Code, Attorney General opinions or Court Decision upon which you relied to formulate the policies and procedures.

N P.O. Box 65002 / Virginia Beach / Virginia 23467-5002 / ☎ 757-818-8003 / 9 UnalienableRights@uarf.us

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