

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

VIRGINIA INFORMATION TECHNOLOGIES  
AGENCY

v.

Case # CL17-5280

FINAL ORDER

WILLIAM H. TURNER and  
OFFICE OF THE EXECUTIVE  
SECRETARY

On the 20<sup>th</sup> day of June 2018, came the Office of the Executive Secretary (The Executive Secretary), by counsel to be heard on the Executive Secretary's Motion to Construe, Motion to Dismiss, and Pleas in Bar (the "Dispositive Motions"), as well as his Motion for Rule to Show Cause and/or Motion for Sanctions Pursuant to Va. Code §8.01-271.1 (the "Sanctions Motions"). Shortly after the hearing the presiding Judge, the Honorable Westbrook Parker, recused himself from further proceeding in this matter. By order entered on the 31<sup>st</sup> day of July, 2018, the Supreme Court of Virginia designated William N. Alexander, II, Retired Judge, to continue with the case until all matters had been disposed of according to law.

The court has received, read, and considered the Executive Secretary's Motion to Construe Prior Filing as Dr. Turner's Petition, Answer and Initial Affirmative Defense, Affirmative Defenses, Pleas in Bar and Motion to Dismiss, the Memorandum in Support, and a complete transcript of the June 20, 2018, hearing before Judge Parker.

Upon consideration of the Dispositive Motions, the arguments and authorities cited therein and at oral argument, and upon good cause shown, the Court hereby FINDS that the Virginia Freedom of Informative Act, Va. Code §§2.2-3700 *et seq.* ("VFOIA"), does not apply to the judiciary, including the Executive Secretary, and further FINDS that the itemized long distance phone records in dispute are not public records of a public body under VFOIA, but rather are records of the judiciary, wherever lodged. Accordingly, it is hereby ADJUDGED, ORDERED, and DECREED that this Court:

1. GRANTS the Executive Secretary's Motion to Construe. Exhibit E to the Executive Secretary's Motion to Construe SHALL BE CONSTRUED as the Petition of Plaintiff, and INTERPRETED to reflect Dr. William H. Turner's ("Dr. Turner") request for itemized long distance phone records from the Executive Secretary under VFOIA, and which Petition SHALL BE DEEMED FILED in this Court on March 14, 2018, pursuant to this Court's previously entered Order dated February 21, 2018; and

2. SUSTAINS the Executive Secretary's Pleas in Bar and GRANTS the Executive Secretary's Motion to Dismiss, for the reasons set forth in the Executive Secretary's filings and oral arguments, including that:
  - a. VFOIA does not apply to the judiciary, including the Executive Secretary, under its plain meaning;
  - b. The enforcement of VFOIA against the judiciary, including the Executive Secretary, is barred by the doctrine of sovereign immunity, which has not been waived;
  - c. The doctrine of the separation of powers bars enforcement of VFOIA against the judiciary, including the Executive Secretary; and

Accordingly, Dr. Turner's Petition is hereby DISMISSED WITH PREJUDICE.

In addition, upon consideration of the Sanctions Motions, the arguments and authorities cited therein and at oral argument, good cause shown, and pursuant to the Court's authority under Va. Code §8.01-364 to make its February 21, 2018, Order permanent and make all appropriate orders to enforce its judgment, it is hereby ADJUDGED, ORDERED, and DECREED that this Court further GRANTS IN PART the Sanctions Motions, which the Court further takes under advisement. Accordingly,

- A. Dr. Turner SHALL BE PROHIBITED from instituting or prosecuting any proceeding in any court of the Commonwealth of Virginia to seek records of the judiciary, including that of the Executive Secretary, wherever lodged, including without limitation any petition for Writ of Mandamus or Injunction against the Executive Secretary or the Virginia Information Technologies Agency under VFOIA. If Dr. Turner has a good faith desire to initiate civil litigation and/or request or cause to be issued a witness subpoena or subpoena duces tecum against the Executive Secretary, including his employees, and/or the Virginia Information Technologies Agency, in litigation related to the judiciary's records, including the Executive Secretary's records, wherever lodged, in any court of the Commonwealth.
  - i. Dr. Turner SHALL file with this Court a "Petition for Leave to File Suit" along with a copy of his proposed lawsuit and a copy of this Order imposing this pre-filing review injunction;
  - ii. Dr. Turner SHALL attach to his Petition a separate and notarized declaration or affidavit certifying that the matters raised in the proposed lawsuit have never been raised in State or Federal Court;
  - iii. Upon the clerk's receipt of Dr. Turner's Petition, the clerk is directed to submit the Petition to the consideration of the Chief Judge, or a designate judge; and
  - iv. Dr. Turner may file his proposed lawsuit with a court of competent jurisdiction only after the Chief Judge, or a designate judge, has approved Dr. Turner's Petition and issued an Order granting Dr. Turner leave to file the lawsuit.

B. Further, the Court hereby SEPARATES from this matter the Sanctions Motions and RESERVES limited jurisdiction over the Sanctions Motions for the purpose of determining whether any further appropriate sanctions should issue after Dr. Turner has been given notice and an opportunity to be heard in response to an Order to Show Cause, which the Court RESERVES jurisdiction to issue at the request of the Executive Secretary.

The Clerk is DIRECTED to send a copy of this Order to all counsel of record and to Dr. William H. Turner, pro se, at 27316 Lankford Highway, Post Office Box 128, Onley, Virginia 23418, and the Clerk is further DIRECTED to return all long distance telephone records of the Executive Secretary in the Court's files to the Executive Secretary. The Clerk SHALL place this matter among the ended causes of the Court.

Pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia, the endorsement of counsel and Dr. William H. Turner, who did not appear at the hearing of this matter, is hereby dispensed with by the Court.

Entered this 15<sup>th</sup> day of October, 2018



William N. Alexander, II  
Judge Designate