

VIRGINIA:

IN THE FAIRFAX CIRCUIT COURT

Fairfax County School Board

PETITIONER

VERSUS

CASE #

2015 14395

Judicial Watch, Inc.

RESPONDENT

2015 OCT 30 AM 5:00
JUDICIAL WATCH
CLERK OF CIRCUIT COURT
FAIRFAX, VA

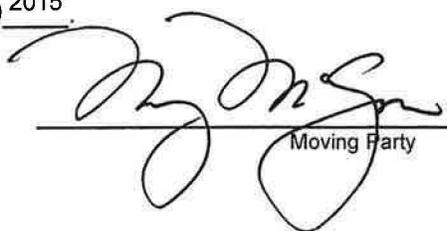
NOTICE

Please take notice that on the 2nd day of November, 2015 at 8:30 a.m. the PETITIONER/RESPONDENT will appear before the Calendar Control Judge for the following: to schedule a hearing on Petition for Additional Time to Respond to FOIA Requests.


Signature
Mary McGowan, Esq.
Name
4020 University Drive, Suite 300
Address
Fairfax, VA 22030
(703) 691-1235
Daytime Telephone #

CERTIFICATE OF SERVICE

I certify that I have ^{had} hand delivered a copy of this Notice to James S. Wilson, RA for Judicial Watch, Inc. on this 30th day of October, 202015.


Moving Party

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FAIRFAX COUNTY PUBLIC SCHOOLS,)
Petitioner)
)
v.)
)
JUDICIAL WATCH, INC.,)
Respondent.)

2015 14395

Civil Act. No.:

2015 OCT 30 AM 9:14
 CLERK OF CIRCUIT COURT
 FAIRFAX, VA
 CIVIL DIVISION

Serve: James S. Wilson, Esq., Reg. Agent
 2002 N. Kenmore St.
 Arlington, VA 22207-3711

PETITION FOR ADDITIONAL TIME TO RESPOND TO FOIA REQUESTS

Petitioner, the Fairfax County School Board (“FCPS” or “the School Board”), by counsel and pursuant to Va. Code § 2.2-3704 (C), respectfully petitions this Honorable Court for additional time to respond to certain requests for email records submitted by Respondent, Judicial Watch, Inc. (“Judicial Watch”), pursuant to the Virginia Freedom of Information Act. In support thereof, FCPS states as follows:

1. Respondent, Judicial Watch, Inc, is a 501(c) (3) nonprofit corporation registered to do business in Virginia, and a “conservative non-partisan educational foundation,” whose principal place of business is 425 Third Street, SW, Washington, DC. This Court has personal jurisdiction over Judicial Watch pursuant to Va. Code § 8.-01-328.1(A)(1), Judicial Watch having submitted requests to FCPS under Virginia’s Freedom of Information Act (“FOIA”) “as a member of the media with circulation in the Commonwealth of Virginia” and on behalf of five Virginia citizens.

2. Virginia’s Freedom of Information Act provides, in pertinent part, that:

Any public body may 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. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

3. In April and May of 2015, Judicial Watch submitted to FCPS seven FOIA requests seeking, *inter alia*, all email and text communications from October 1, 2014 through May 5, 2015 between all School Board members and the Division Superintendent, Karen Garza,

numerous other FCPS administrators and HR staff, Federal Congressional members and staff, the Va. Atty. General and his staff, members of the Virginia General Assembly and their staff, and several other entities, which emails pertain to “School Board Policy 1450 (Nondiscrimination), transgender, gender equality and/or same sex marriage.” Exh. A-FOIA Requests dated April 27, 29, and May 5, 2015.

4. On May 4th, May 6th, and May 12th, the School Board’s FOIA officer, Brandynn Reaves, responded to Judicial Watch’s FOIA requests, confirming that the collective requests sought emails between all twelve Board members and all FCPS personnel (over 25,000 employees), and advising that the estimated cost of accessing, duplicating, supplying, and searching for the combined requested emails was \$562.32. FCPS requested advance payment as provided by Va. Code § 2.2-3704 (H) (which request tolled the time period under which the School Board was required to respond to the FOIA requests). See, Exh. B-Reaves FOIA Responses of May 4, May 6 and May 12, 2015.
5. It was not until five months later, on August 21, 2015, that Judicial Watch responded to Reaves, “to confirm that Judicial Watch does intend to pay all fees associated with processing the 7 FOIA requests filed with your office on April 23, April 29, and May 5, 2015. We will send a check for \$562.32 as soon as possible.” See, Exh. C- Judicial Watch 8/21/2015 email.
6. Pursuant to FOIA, FCPS was under no obligation to produce the requested documents until such time as the requester paid the costs associated with these very broad and burdensome requests. Va. Code §§ 2.2-3704(F)(H).
7. Judicial Watch did not pay the requested costs until Thursday, October 8, 2015.
8. Reaves immediately requested that the FCPS IT employee responsible for conducting such email searches locate all emails which were responsive to the seven requests, searched by appropriate terms. That search, which included over 25, 000 FCPS employee email accounts, was returned at 4:30 pm on Friday, October 9, 2015 and identified approximately 2264 emails. All those emails were then transmitted to a different IT department for conversion to a workable format under which Reaves and her only assistant (part-time) could review (and redact as needed) each email to make an initial determination whether the email fell within one or more FOIA exemptions, particularly Va. Code § 2.2-3705.1 (written advice of legal counsel . . . and any other records protected by the attorney-client privilege) or § 2.2-3705.7 (2) (working papers of the Division Superintendent).
9. The process of reviewing thousands of FCPS emails is extremely time-consuming. Reaves or her assistant must open each email, read it, determine if the email or any portion thereof may be exempt, and if so, redact the email, convert all responsive emails to PDF, then sort all the emails into groups responsive to the various categories contained within the seven FOIA requests.

10. Further review of the emails is then provided by a trained paralegal in the FCPS Office of Division Counsel, who is able to consult with counsel to confirm whether particular emails are properly exempted and or produced.
11. Reaves and her assistant promptly began their review of the emails on the “next working day,” Tuesday, October 13th (Monday was President’s Day). Due to the huge volume of emails responsive to the seven FOIA requests, it became apparent to Reaves that additional time was needed to review, redact, sort and produce the requested emails. On October 16th, Reaves invoked the additional seven-working day extension provided by FOIA, where it is “not practically possible to provide the requested records or to determine if they are available within the five-day work period.” Va. Code § 2.2-3704 (B (4)). Exh. D. 10/16/2015 Reaves letter.
12. On October 27, 2015, FCPS provided Judicial Watch with a CD containing approximately 1933 pages of non-exempt emails. Exh. E- October 27, 2015 FOIA response.
13. During her review of those emails, Reeves had noticed that some emails did not seem to be complete “threads.” Accordingly, she asked IT to do a second search to ensure that the FOIA response was comprehensive. The second search, which was not returned to Reeves’s office until Friday October 23, 2015, identified another 9002 emails, of which approximately 2000 have been deemed responsive to the FOIA requests, but require further review, redaction and collation.
14. Reaves also notified Judicial Watch on October 27th of the results of the second search, and asked for an extra ten days to review and produce those emails, i.e., by Friday, November 6, 2015. Exh. F, October 27, 2015 Reaves Letter.
15. In response, Judicial Watch requested a “daily rolling production of completed documents.” Exh. G-Email Thread of October 27-28, 2015. However, FCPS could not comply with that request and still meet its other operational responsibilities. As Reaves explained, due to the extraordinary scope of the seven requests (emails involving all 12 school board members to and from all 25,000 FCPS personnel over an 8 month period) and limited staff, FCPS could not produce the documents on a daily basis, but could provide them in three installments, on Friday, October 30th, Tuesday, November 3rd and Friday, November 6th. Id.
16. Judicial Watch responded by abandoning its original request for a daily rolling production and now demanded all documents by noon on Monday, November 2, 2015, noting that it “is the leading FOIA requestor and litigator in the country” with “more than 21 years of experience in compelling the processing and production of public records . . .” and . . . “If your organization is serious about its work, you can easily move through the 2000 pages in three days-certainly by Noon on Monday. There should be overtime and weekend efforts made to meet your legal obligation.” Id.

17. Despite the fact that Judicial Watch waited five months to respond to FCPS's request for payment of the costs associated with the processing of the seven extremely broad FOIA requests, Respondent has refused to grant FCPS's eminently reasonable request for a ten-day extension.
18. Given the tenor of Judicial Watch's response of October 28, 2015, and the inability of FCPS to meet Respondent's unreasonable demands, FCPS was forced to file this Petition for an extension of time to provide the additional documents by November 6, 2015.
19. Due to well-publicized restrictions and limited staffing of both teaching and administrative positions, FCPS simply does not have sufficient employees to produce documents on a daily basis or meet Judicial Watch's Monday, November 2nd deadline. (Since 2008, FCPS's operating budget has been reduced by nearly half a billion dollars.)
20. Reaves, the only full time employee responsible for FOIA requests, handles roughly 30 to 35 FOIA requests a month, with only a part-time management technician to assist her. (Reaves' Department lost another management technician to budget cuts) Reaves currently has four other pending FOIA requests and associated deadlines to meet, one this Friday, October 30th, two on Monday, November 2nd and another on Wednesday, November 4th. The only paralegal in the Office of Division Counsel has similar obligations, including compliance with a subpoena issued by the Fairfax Circuit Court in a criminal matter which is returnable on Friday, November 2, 2015.
21. If those School Board employees responsible for these operations were forced to devote every waking hour prior to Monday, November 2nd to meet the unreasonable deadline imposed by Judicial Watch, they could not meet other responsibilities essential to the School Board's operations. (Nor does FOIA impose a duty on public bodies to require employees to work overtime, on weekends or holidays, as demanded by Judicial Watch. In contrast, the Act's compliance deadlines refer to "working days.")

WHEREFORE, on the foregoing grounds, FCPS asks this Honorable Court for entry of an Order extending the timeline by which FCPS must produce the most recent emails responsive to Judicial Watch's FOIA requests through close of business on Friday, November 6, 2015.

Dated: October 30, 2015

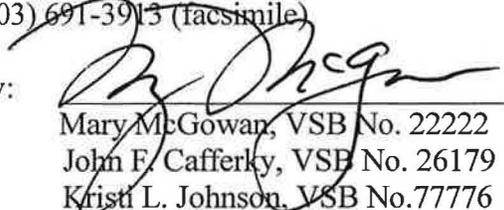
Respectfully Submitted,

FAIRFAX COUNTY SCHOOL BOARD

By Counsel

BLANKINGSHIP & KEITH, PC
4020 University Drive, Suite 300
Fairfax, Virginia 22030
(703) 691-1235 (telephone)
(703) 691-3913 (facsimile)

By:



Mary McGowan, VSB No. 22222
John F. Cafferky, VSB No. 26179
Kristi L. Johnson, VSB No. 77776
Counsel for Petitioner

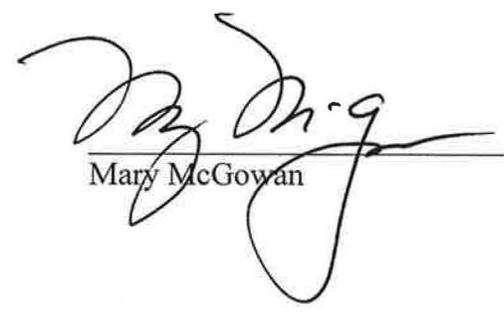
CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2015, a true and correct copy of the foregoing Petition for Additional Time to Respond to FOIA Requests has been served on:

James S. Wilson, Esq., Registered Agent
Judicial Watch
2002 N. Kenmore Street
Arlington, VA 22207-3711

and emailed to:

Paul Orfanedes, Esq., Secretary/
Treasurer and Lead Litigation Attorney
Chris Ferrell, Director of Investigations & Research
Judicial Watch
425 Third St. SW, Ste. 8000
Washington, DC 20024



Mary McGowan



**Judicial
Watch**TM
*Because no one
is above the law!*

April 27, 2015

VIA CERTIFIED MAIL & EMAIL

Brandy Reaves
Public Information Specialist, FOIA Officer
8115 Gatehouse Rd.,
Falls Church, VA 22042
email: bareaves@fcps.edu

Re: Virginia Freedom of Information Act Request

Dear Sir/Madam:

As a member of the news media with circulation in the Commonwealth of Virginia Va. Code Ann. § 2.2-3704(A), and on behalf of Andrea Lafferty, Fairfax County resident, Judicial Watch, Inc. requests the following records documenting public school system and elected officials' electronic, including but not limited to, email and text correspondence regarding FCPS Policy 1450, transgender, gender identity and/or same sex marriage, pursuant to Virginia Freedom of Information Act (§2.2-3700, et seq.):

1. All correspondence by FCPS Board member at-large Ryan McElveen with, copying or blind-copying any School Board member.
2. All correspondence by FCPS Board member at-large Ryan McElveen with, copying or blind-copying Dr. Karen Garza, Michael Molloy, Marty Smith, Virginia Attorney General Mark Herring or members of his staff, Virginia General Assembly members, Equality Virginia, and/or FCPS Human Resources personnel

The timeframe for this request is October 1, 2014 to the present.

Any reasonably segregable portion of a record otherwise exempt from disclosure is required to be made available after deletion of the portions that are exempted by law and a written explanation must be provided as to why certain information was redacted. Va. Code Ann. § 2.2-3704(B)(3)

Custodian of Records
Virginia Freedom of Information Act Request
April 27, 2015
Page 2 of 2

In the public's interest, we ask for a fee waiver. As a media organization with circulation in Virginia, we have a proven method for turning raw records into distinct editorial works and disseminating them to the public through our subscription The Verdict and Weekly Update and free works Corruption Chronicles and Investigations and Research Blog. However, in the case that our request for a fee waiver is denied, we are willing to pay up to \$200, but ask that we be notified in advance of cost estimates pursuant to Va. Code Ann. § 2.2-3704(F).

We look forward to receiving records in five (5) business days Va. Code Ann. § 2.2-3704(E). To facilitate the response, we request records be provided in electronic format via email Va. Code Ann. § 2.2-3704(G).

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or kbailey@judicialwatch.org.

Sincerely,



Kate Bailey
Judicial Watch, Inc.



**Judicial
Watch**[™]
*Because no one
is above the law!*

April 27, 2015

VIA CERTIFIED MAIL & EMAIL

Brandy Reaves
Public Information Specialist, FOIA Officer
8115 Gatehouse Rd.,
Falls Church, VA 22042
email: breaves@fcps.edu

Re: Virginia Freedom of Information Act Request

Dear Sir/Madam:

As a member of the news media with circulation in the Commonwealth of Virginia Va. Code Ann. § 2.2-3704(A), and on behalf of Andrea Lafferty, Fairfax County resident, Judicial Watch, Inc. requests the following records documenting public school system and elected officials' electronic, including but not limited to, email and text correspondence regarding FCPS Policy 1450, transgender, gender identity and/or same sex marriage, pursuant to Virginia Freedom of Information Act (§2.2-3700, et seq.):

1. All correspondence by FCPS Board member at-large Ilryong Moon with, copying or blind-copying any School Board member.
2. All correspondence by FCPS Board member at-large Ilryong Moon with, copying or blind-copying Dr. Karen Garza, Michael Molloy, Marty Smith, Virginia Attorney General Mark Herring or members of his staff, Virginia General Assembly members, Equality Virginia, and/or FCPS Human Resources personnel

The timeframe for this request is October 1, 2014 to the present.

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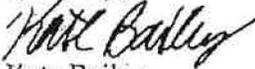
Custodian of Records
Virginia Freedom of Information Act Request
April 27, 2015
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Sincerely,



Kate Bailey
Judicial Watch, Inc.



Judicial Watch

*Because no one
is above the law!*

April 29, 2015

VIA CERTIFIED MAIL & EMAIL

Brandy Reaves
Public Information Specialist, FOIA Officer
8115 Gatehouse Rd.
Falls Church, VA 22042
email: bareaves@fcps.edu

Re: Virginia Freedom of Information Act Request

Dear Sir/Madam:

As a member of the news media with circulation in the Commonwealth of Virginia Va. Code Ann. § 2.2-3704(A), and on behalf of Keith and Lauren Appell, Fairfax County residents, Judicial Watch, Inc. requests the following records documenting public school system and elected officials' electronic, including but not limited to, email and text correspondence regarding FCPS Policy 1450, transgender, gender identity and/or same sex marriage, pursuant to Virginia Freedom of Information Act (§2.2-3700, et seq.):

1. All correspondence by FCPS Board member Jane Strauss with, copying or blind-copying any School Board member.
2. All correspondence by FCPS Board member Jane Strauss with, copying or blind-copying Dr. Karen Garza, Michael Molloy, Marty Smith, Virginia Attorney General Mark Herring or members of his staff, Virginia General Assembly members, Equality Virginia, and/or FCPS Human Resources personnel

The timeframe for this request is October 1, 2014 to the present.

Any reasonably segregable portion of a record otherwise exempt from disclosure is required to be made available after deletion of the portions that are exempted by law and a written explanation must be provided as to why certain information was redacted. Va. Code Ann. § 2.2-3704(B)(3)

Custodian of Records
Virginia Freedom of Information Act Request
April 29, 2015
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In the public's interest, we ask for a fee waiver. As a media organization with circulation in Virginia, we have a proven method for turning raw records into distinct editorial works and disseminating them to the public through our subscription *The Verdict* and *Weekly Update* and free works *Corruption Chronicles* and *Investigations and Research Blog*. However, in the case that our request for a fee waiver is denied, we are willing to pay up to \$200, but ask that we be notified in advance of cost estimates pursuant to Va. Code Ann. § 2.2-3704(F).

We look forward to receiving records in five (5) business days Va. Code Ann. § 2.2-3704(E). To facilitate the response, we request records be provided in electronic format via email Va. Code Ann. § 2.2-3704(G).

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or kbailey@judicialwatch.org.

Sincerely,



Kate Bailey
Judicial Watch, Inc.



**Judicial
Watch®**
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is above the law!*

April 29, 2015

VIA CERTIFIED MAIL & EMAIL

Brandy Reaves
Public Information Specialist, FOIA Officer
8115 Gatehouse Rd.
Falls Church, VA 22042
email: bareaves@fcps.edu

Re: Virginia Freedom of Information Act Request

Dear Sir/Madam:

As a member of the news media with circulation in the Commonwealth of Virginia Va. Code Ann. § 2.2-3704(A), and on behalf of Mychele Brickner, Fairfax County resident, Judicial Watch, Inc. requests the following records documenting public school system and elected officials' electronic, including but not limited to, email and text correspondence regarding FCPS Policy 1450, transgender, gender identity and/or same sex marriage, pursuant to Virginia Freedom of Information Act (§2.2-3700, et seq.):

1. All correspondence by FCPS Board member Kathy Smith with, copying or blind-copying any School Board member.
2. All correspondence by FCPS Board member Kathy Smith with, copying or blind-copying Dr. Karen Garza, Michael Molloy, Marty Smith, Virginia Attorney General Mark Herring or members of his staff, Virginia General Assembly members, Equality Virginia, and/or FCPS Human Resources personnel

The timeframe for this request is October 1, 2014 to the present.

Any reasonably segregable portion of a record otherwise exempt from disclosure is required to be made available after deletion of the portions that are exempted by law and a written explanation must be provided as to why certain information was redacted. Va. Code Ann. § 2.2-3704(B)(3)

Custodian of Records
Virginia Freedom of Information Act Request
April 29, 2015
Page 2 of 2

In the public's interest, we ask for a fee waiver. As a media organization with circulation in Virginia, we have a proven method for turning raw records into distinct editorial works and disseminating them to the public through our subscription *The Verdict* and *Weekly Update* and free works *Corruption Chronicles* and *Investigations and Research Blog*. However, in the case that our request for a fee waiver is denied, we are willing to pay up to \$200, but ask that we be notified in advance of cost estimates pursuant to Va. Code Ann. § 2.2-3704(F).

We look forward to receiving records in five (5) business days Va. Code Ann. § 2.2-3704(E). To facilitate the response, we request records be provided in electronic format via email Va. Code Ann. § 2.2-3704(G).

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or kbailey@judicialwatch.org.

Sincerely,



Kate Bailey
Judicial Watch, Inc.



**Judicial
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is above the law!*

May 5, 2015

VIA CERTIFIED MAIL & EMAIL

Fairfax County Public Schools
John Torre, Public Information Officer
8115 Gatehouse Road
Falls Church, VA 22042

Re: Virginia Freedom of Information Act Request

Dear Sir/Madam:

As a member of the news media with circulation in the Commonwealth of Virginia Va. Code Ann. § 2.2-3704(A), and on behalf of Ron Johnson, Fairfax County resident, Judicial Watch, Inc. requests the following records documenting public school system and elected officials' electronic, including but not limited to, email and text correspondence regarding FCPS Policy 1450, transgender, gender identity and/or same sex marriage, pursuant to Virginia Freedom of Information Act (§2.2-3700, et seq.):

- 1) For Hunter Mill District School Board Member Pat Hynes, Federal Legislative Liaison, electronic email communications relating to FCPS Policy 1450, gender identity policy, transgender and gender equality issues which are with, from or copying any of the following:
 - a) FCPS personnel: Dr. Karen Garza, Dr. Steven Lockard, Kim Dockery, Marty Smith, Susan Quinn, Christine Donohue, Michael Molloy and Phyllis Pajardo,
 - b) School Board Members,
 - c) Federal Congressional members and staff,
 - d) Virginia Attorney General Mark Herring and staff,
 - e) Virginia General Assembly members and staff,
 - f) Virginia School Board Association Board and staff, and

Custodian of Records
Virginia Freedom of Information Act Request
May 5, 2015
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g) Equality Virginia.

2) For Springfield District School Board Member Elizabeth Schultz, Chairman, Public Engagement Committee,

a) email communications relating to FCPS Policy 1450, gender identity policy, transgender and gender equality issues with all members of, or advisors to, the Public Engagement Committee, and

b) all Public Engagement Committee meetings, notes, agendas and schedules for public engagement on this matter, including any scheduled public engagement which was planned but not actually conducted.

The timeframe for this request is October 1, 2014 to the present.

Any reasonably segregable portion of a record otherwise exempt from disclosure is required to be made available after deletion of the portions that are exempted by law and a written explanation must be provided as to why certain information was redacted. Va. Code Ann. § 2.2-3704(B)(3)

In the public's interest, we ask for a fee waiver. As a media organization with circulation in Virginia, we have a proven method for turning raw records into distinct editorial works and disseminating them to the public through our subscription *The Verdict* and *Weekly Update* and free works *Corruption Chronicles* and *Investigations and Research Blog*. However, in the case that our request for a fee waiver is denied, we are willing to pay up to \$200, but ask that we be notified in advance of cost estimates pursuant to Va. Code Ann. § 2.2-3704(F).

We look forward to receiving records in five (5) business days Va. Code Ann. § 2.2-3704(E). To facilitate the response, we request records be provided in electronic format via email Va. Code Ann. § 2.2-3704(G).

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or kbailey@judicialwatch.org.

Sincerely,



Kate Bailey
Judicial Watch, Inc.



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May 5, 2015

VIA CERTIFIED MAIL & EMAIL

Fairfax County Public Schools
John Torre, Public Information Officer
8115 Gatehouse Road
Falls Church, VA 22042

Re: Virginia Freedom of Information Act Request

Dear Sir/Madam:

As a member of the news media with circulation in the Commonwealth of Virginia Va. Code Ann. § 2.2-3704(A), and on behalf of Sharol Copeland, Fairfax County resident, Judicial Watch, Inc. requests the following records documenting public school system and elected officials' electronic, including but not limited to, email and text correspondence regarding FCPS Policy 1450, transgender, gender identity and/or same sex marriage, pursuant to Virginia Freedom of Information Act (§2.2-3700, et seq.):

- 1) Email communications by at-large members Ilyong Moon, Ted Velkoff and Ryan McElveen relating to FCPS' Non-Discrimination Policy 1450 from October 2014 to present with members of the public, FCPS staff, state officials and their staff and/or federal officials and their staff.
- 2) Email communications by Tamara Derenak Kaufax, Lee District and Chairman, relating to FCPS' Non-Discrimination Policy 1450 from October 2014 to present with members of the public, FCPS staff, state officials and their staff and/or federal officials and their staff.

The timeframe for this request is October 1, 2014 to the present.

Any reasonably segregable portion of a record otherwise exempt from disclosure is required to be made available after deletion of the portions that are exempted by law and a

Custodian of Records
Virginia Freedom of Information Act Request
May 5, 2015
Page 2 of 2

written explanation must be provided as to why certain information was redacted. Va. Code Ann. § 2.2-3704(B)(3)

In the public's interest, we ask for a fee waiver. As a media organization with circulation in Virginia, we have a proven method for turning raw records into distinct editorial works and disseminating them to the public through our subscription *The Verdict* and *Weekly Update* and free works *Corruption Chronicles* and *Investigations and Research Blog*. However, in the case that our request for a fee waiver is denied, we are willing to pay up to \$200, but ask that we be notified in advance of cost estimates pursuant to Va. Code Ann. § 2.2-3704(F).

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If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or kbailey@judicialwatch.org.

Sincerely,



Kate Bailey
Judicial Watch, Inc.



**Judicial
Watch**
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is above the law!*

May 5, 2015

VIA CERTIFIED MAIL & EMAIL

Brandy Reaves
Public Information Specialist, FOIA Officer
8115 Gatehouse Rd.
Falls Church, VA 22042
email: bareaves@fcps.edu

Re: Virginia Freedom of Information Act Request

Dear Sir/Madam:

As a member of the news media with circulation in the Commonwealth of Virginia Va. Code Ann. § 2.2-3704(A), and on behalf of Andrea Lafferty, Fairfax County resident, Judicial Watch, Inc. requests the following records documenting public school system and elected officials' electronic, including but not limited to, email and text correspondence regarding FCPS Policy 1450, transgender, gender identity and/or same sex marriage, pursuant to Virginia Freedom of Information Act (§2.2-3700, et seq.):

1. Any and all records related to the recruiting and/or hiring of a consultant to formulate and implement FCPS Policy 1450, including but not limited to standards of performance and correspondence with prospective candidates; and
2. Any and all electronic email communications relating to the above-mentioned consultant for FCPS Policy 1450, gender identity policy, transgender and gender equality issues which are with, from or copying any of the following:
 - a) FCPS personnel: Dr. Karen Garza, Dr. Steven Lockard, Kim Dockery, Marty Smith, Susan Quinn, Christine Donohue, Michael Molloy and Phyllis Pajardo,
 - b) School Board Members,
 - c) Federal Congressional members and staff,

Custodian of Records
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- d) Virginia Attorney General Mark Herring and staff,
- e) Virginia General Assembly members and staff,
- f) Virginia School Board Association Board and staff, and
- g) Equality Virginia.

The timeframe for this request is October 1, 2014 to the present.

Any reasonably segregable portion of a record otherwise exempt from disclosure is required to be made available after deletion of the portions that are exempted by law and a written explanation must be provided as to why certain information was redacted. Va. Code Ann. § 2.2-3704(B)(3)

In the public's interest, we ask for a fee waiver. As a media organization with circulation in Virginia, we have a proven method for turning raw records into distinct editorial works and disseminating them to the public through our subscription *The Verdict* and *Weekly Update* and free works *Corruption Chronicles* and *Investigations and Research Blog*. However, in the case that our request for a fee waiver is denied, we are willing to pay up to \$200, but ask that we be notified in advance of cost estimates pursuant to Va. Code Ann. § 2.2-3704(F).

We look forward to receiving records in five (5) business days Va. Code Ann. § 2.2-3704(E). To facilitate the response, we request records be provided in electronic format via email Va. Code Ann. § 2.2-3704(G).

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or kbailey@judicialwatch.org.

Sincerely,



Kate Bailey
Judicial Watch, Inc.



FAIRFAX COUNTY
PUBLIC SCHOOLS

Office of Communication
and Community Relations

8115 Gatehouse Rd., Suite 5100
Falls Church, Virginia 22042

May 4, 2015

Kate Bailey
Judicial Watch, Inc.
425 Third St, SW, Ste. 8000
Washington, DC 20024

Dear Ms Bailey:

This letter serves as the response to your two requests for information received April 27, 2015, pursuant to the Virginia Freedom of Information Act (VFOIA).

You requested e-mails from Fairfax County School Board members Moon and McElveen from October 1, 2014 to April 27, 2015 regarding the proposed transgender policy, gender identity, and same sex marriage. Fairfax County Public Schools (FCPS) can only search FCPS mailboxes.

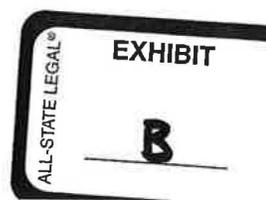
Due to the extensive search involved with your request, we will not be able to waive the fee. The cost estimate of staff time to search for the requested records is **\$234.30** (5 hours @ \$46.86 per hour US 25). Va. Code § 2.2-3704(F) allows Fairfax County Public Schools to charge for such expenditures.

Since this is over the \$200 threshold outlined in Va. Code §2.2-3704(H), a deposit is required before continuing to process this request. The deposit will be credited to the final cost of supplying the records. Please let us know if you wish to proceed.

Sincerely,


Brandynn Reaves
Public Information Specialist

BR/sk





**FAIRFAX COUNTY
PUBLIC SCHOOLS**

Office of Communication
and Community Relations

8115 Gatehouse Rd., Suite 5100
Falls Church, Virginia 22042

May 6, 2015

Kate Bailey
Judicial Watch, Inc.
425 Third St, SW, Ste. 8000
Washington, DC 20024

Dear Ms. Bailey:

This letter serves as the response to your two requests for information received April 29, 2015, pursuant to the Virginia Freedom of Information Act (VFOIA).

You requested emails from Fairfax County School Board members Strauss and Smith from October 1, 2014 to April 29, 2015 regarding the proposed transgender policy, gender identity and same sex marriage. FCPS can only search FCPS mailboxes.

Due to the extensive search involved with your request, we will not be able to waive the fee. The cost estimate of staff time to search for the requested records is **\$234.30** (5 hours @ \$46.86 per hour US 25). Va. Code § 2.2-3704(F) allows Fairfax County Public Schools to charge for such expenditures.

Since this is over the \$200 threshold outlined in Va. Code §2.2-3704(H), a deposit is required before continuing to process this request. The deposit will be credited to the final cost of supplying the records. Please let us know if you wish to proceed.

Sincerely,


Brandy Reaves
Public Information Specialist

BR/sk



FAIRFAX COUNTY
PUBLIC SCHOOLS

Office of Communication
and Community Relations

8115 Gatehouse Rd., Suite 5100
Falls Church, Virginia 22042

May 12, 2015

Kate Bailey
Judicial Watch, Inc.
425 Third St, SW, Ste. 8000
Washington, DC 20024

Dear Ms. Bailey:

This letter serves as the response to your three requests for information received May 5, 2015, pursuant to the Virginia Freedom of Information Act (VFOIA).

Due to the extensive staff search time involved with these requests, Fairfax County Public Schools (FCPS) is unable to waive the fee. Your requests are outlined below, along with the staff search time cost estimate.

Request 1 (Ron Johnson)

1. Fairfax County School Board member Pat Hynes' e-mails and texts relating to FCPS Policy 1450, transgender, gender equality, and/or same-sex marriage. You would like e-mails sent by Pat Hynes to or from the following individuals:
 - a. Dr. Garza
 - b. Dr. Lockard
 - c. Dr. Dockery
 - d. Marty Smith
 - e. Susan Quinn
 - f. Chris Donohue
 - g. Michael Molloy
 - h. Dr. Phyllis Pajardo
 - i. School Board members
 - j. Federal Congressional members and staff
 - k. VA Attorney General Mark Herring and staff
 - l. VA General Assembly members and staff
 - m. VA School Board Association and staff
 - n. Equality Virginia

Time Frame: October 1, 2014 to May 5, 2015

2. Fairfax County School Board member Elizabeth Schultz's e-mail communications relating to FCPS Policy 1450, gender identity policy, transgender and gender equality issues with all members of, or advisors to the Public Engagement Committee and all public engagement committee meeting, notes, agendas, and schedules for public engagement on this matter, including any scheduled public engagement which was planned but not actually conducted.

Time Frame: October 1, 2014 to May 5, 2015

Kate Bailey
Judicial Watch, Inc.
page 2

In response to this request, all Public Engagement Committee meeting agendas, minutes and annual plans are published on the FCPS School Board website. You can access the website using the following link: <http://www.fcps.edu/sch/bd/index.shtml>.

Request 2 (Sharol Copeland)

1. Fairfax County School Board members Moon, Velkoff, McElveen e-mail communications relating to FCPS Non-Discrimination Policy 1450 with members of the public, FCPS staff, state officials and their staff and/or federal officials and their staff.

Time Frame: October 1, 2014 to May 5, 2015

This request is too broad. Reasonably specific search criteria is required under Va. Code § 2.2-3703.1(B). We are assuming the search criteria is the same as Request 1 – Ron Johnson of page 1 of this letter. If not, please let us know.

2. Fairfax County School Board Chairman Tamara Derenak-Kaufax's e-mail communications relating to FCPS Non-Discrimination Policy 1450 with members of the public, FCPS staff, state officials and their staff and/or federal officials and their staff from October 1, 2014-May 5, 2015.

Time Frame: October 1, 2014 to May 5, 2015

Again, this request is too broad. Reasonably specific search criteria is required under Va. Code § 2.2-3703.1(B). We are assuming the search criteria is the same as Request 1 – Ron Johnson of page 1 of this letter. If not, please let us know.

Request 3 (Andrea Lafferty)

1. Records relating to the recruiting and/or hiring of a consultant to formulate and implement FCPS Policy 1450, including but not limited to standards of performance and correspondence with prospective candidates.

Records related to the hiring and standards of performance of a prospective or active FCPS employee are withheld in their entirety as a personnel record, pursuant to Va. Code § 2.2-3705.1.(1).

2. E-mail communications relating to the above-mentioned consultant for FCPS Policy 1450, gender identity policy, transgender and gender equality issues which are with, from or copying any of the following:
 - a. Dr. Garza
 - b. Dr. Lockard
 - c. Dr. Dockery
 - d. Marty Smith
 - e. Susan Quinn
 - f. Chris Donohue
 - g. Michael Molloy
 - h. Dr. Phyllis Pajardo
 - i. School Board Members
 - j. Federal Congressional members and staff
 - k. VA Attorney General Mark Herring and staff
 - l. VA General Assembly members and staff
 - m. VA School Board Association and staff

Kate Bailey
Judicial Watch, Inc.
page 3

n. Equality Virginia

Time Frame: October 1, 2014 to May 5, 2015

It appears from the three separate requests received May 5, 2015, along with the other four received, April 23, 2015 (2), and April 29, 2015 (2), that you seek all communications (e-mails and texts) to and from all Fairfax County School Board members and FCPS personnel regarding records related to:

- FCPS Policy 1450, **transgender, gender equality, and/or same-sex marriage**
- Recruiting and/or hiring of a **consultant** to formulate and implement FCPS Policy 1450

To efficiently process all requests, we have combined the seven requests into one, with a single cost estimate for the staff search time. The cost estimate of staff time to search for the requested records is **\$562.32** (12 hours @ \$46.86 per hour US 25). Va. Code § 2.2-3704(F) allows Fairfax County Public Schools to charge for such expenditures.

Since this is over the \$200 threshold outlined in Va. Code §2.2-3704(H), a deposit is required before continuing to process this request. The deposit will be credited to the final cost of supplying the records. Please let us know if you wish to proceed.

Sincerely,



Brandynn Reaves
Public Information Specialist

BR/sk

From: [Kate Bailey](#)
To: [Reaves, Brandynn](#)
Subject: VFOIA requests April-May 2015
Date: Friday, August 21, 2015 11:34:24 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

I am writing to confirm that Judicial Watch does intend to pay all fees associated with processing the 7 VFOIA requests filed with your office on April 23, April 29, and May 5 2015. We will send a check for t\$562.32 as soon as possible.

Kate Bailey
FOIA Program Manager
Judicial Watch Inc.
425 3rd Street, SW Suite 800
Washington, DC 20024
(202)-646-5172

Check Out Judicial Watch's Social Media Platforms!





FAIRFAX COUNTY
PUBLIC SCHOOLS

Office of Communication
and Community Relations

8115 Gatehouse Rd., Suite 5100
Falls Church, Virginia 22042

October 16, 2015

Kate Bailey
Judicial Watch, Inc.
425 Third St, SW, Ste. 8000
Washington, DC 20024

Dear Ms. Bailey:

We are in receipt of your payment of \$562.32 for the single cost estimate for staff time to search for the seven submitted requests. The check was received October 8, 2015.

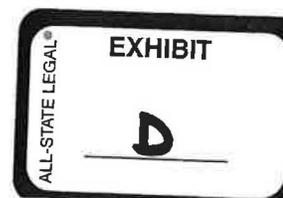
Due to the voluminous amount of records, it is not possible as a practical matter to provide the requested information within the initial five-work-day period provided for by the Act. School system staff members are processing the request, which you have made. The system expects to provide a response to your request within the supplemental period of seven work days as provided for in Va. Code § 2.2-3704(B)(4).

Sincerely,

A handwritten signature in cursive script that reads "Brandy Reaves".

Brandynn Reaves
Public Information Specialist

BR/sk





**FAIRFAX COUNTY
PUBLIC SCHOOLS**

Office of Communication
and Community Relations

8115 Gatehouse Rd., Suite 5100
Falls Church, Virginia 22042

October 27, 2015

Kristi Jespersen
Kate Bailey
Judicial Watch, Inc.
425 Third St, SW, Ste. 800
Washington, DC 20024

Dear Ms. Jespersen and Ms. Bailey:

This letter responds to your seven requests for information under the Virginia Freedom of Information Act (FOIA) relating to the Fairfax County Public Schools (FCPS) Policy 1450, transgender, gender equality, and/or same-sex marriage, and the recruiting and hiring of a consultant to advise regarding the implementation of FCPS Policy 1450.

As we noted in our May 12, 2015, letter, it appears from the 3 separate requests received May 5, 2015 along with the other four received April 23 (2) and April 29 (2) that you seek all communications to and from all Fairfax County School Board Members and FCPS personnel, from October 1, 2014 – May 5, 2015.

Your payment of \$562.32 for the single combined cost estimate for staff time to search for the seven submitted requests was received by FCPS on October 8, 2015. On October 16, we timely informed you that given the breadth and scope of your request, we would need 7 additional working days to respond to your request, as provided by FOIA.

Enclosed you will find a CD containing e-mail communications from all FCPS School Board members and various FCPS personnel relating to the above mentioned topics.

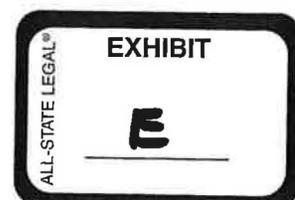
As allowed per the Code of Virginia Section 2.2-3705.1(2), 147 pages were withheld in their entirety because they contain the written advice of legal counsel and other records protected by the attorney-client privilege. Additionally, as permitted per the Code of Virginia Section 2.2-3705.7(2), 231 pages are withheld in entirety because they contain the working papers of the chief executive officer, Dr. Karen Garza.

Please note we have redacted from some of the records, items of individually identifiable personnel information, written advice of legal counsel, personal information, and working papers of the chief executive officer, as authorized by Virginia Code Sections 2.2-3705.1(1), 2.2-3705.1(2), 2.2-3705.1(10), 2.2-3705.7(2).

Sincerely,

Brandynn Reaves
Public Information Specialist

BR/sk
Enclosure





**FAIRFAX COUNTY
PUBLIC SCHOOLS**

Office of Communication
and Community Relations

8115 Gatehouse Rd., Suite 5100
Falls Church, Virginia 22042

October 27, 2015

Kristi Jespersen
Judicial Watch, Inc.
425 Third St, SW, Ste. 800
Washington, DC 20024

Dear Ms. Jespersen:

This letter serves as a supplement to your seven requests for information under the Virginia Freedom of Information Act (FOIA) relating to the Fairfax County Public Schools (FCPS) Policy 1450, transgender, gender equality, and/or same-sex marriage, and the recruiting and hiring of a consultant to advise regarding the implementation of FCPS Policy 1450.

As we noted in our May 12, 2015, letter, it appears from the 3 separate requests received May 5, 2015 along with the other four received April 23 (2) and April 29 (2) that you seek all communications to and from all Fairfax County School Board Members and FCPS personnel, from October 1, 2014 – May 5, 2015.

On October 16, we informed you in a timely manner that given the breadth and scope of your request, we would need 7 additional working days to respond to your request, as provided by FOIA. Due to your voluminous request, FCPS has identified an additional 2000 emails that will take us an extra 10 days to review for privileged, personal, or otherwise confidential information protected by FOIA. We anticipate that we will complete the review by November 6, 2015.

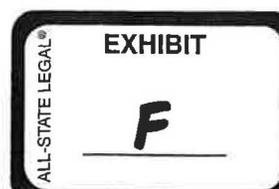
As provided by the Code of Virginia, in light of the large number of documents responsive to your request, we ask that for an additional 10 days, until November 6, to review the newly identified 2000 emails. If you are amenable to this, please let us know.

Thank you for your consideration.

Sincerely,

Brandynn Reaves
Public Information Specialist

BR/sk



From: [Chris Farrell](#)
To: [Reaves, Brandynn](#)
Cc: [Kirsti Jespersen](#)
Subject: Fwd: Follow up Response Judicial Watch FOIA
Date: Wednesday, October 28, 2015 3:32:03 PM
Importance: High

Dear Ms. Reaves:

Last evening, you notified Judicial Watch of an additional 2000 pages of material responsive to our FOIA requests filed last spring (April/May 2015). You proposed granting yourselves ten (10) additional days for processing the records.

Our counter-proposal was for your office to release each day's FOIA processing work on a daily, rolling, basis in order to maximize the availability of information to the public — especially in light of your organization's admitted failure to identify and produce the entire universe of records requested six (6) months ago.

Now, you propose record productions on Friday, October 30th; Tuesday, November 3rd; and, Friday November 6th.

Judicial Watch is the leading FOIA requester and litigator in the country. As an organization, we have more than 21-years of experience in compelling the processing and production of public records — many of the requests/productions are quite complicated. We have a keen understanding of the requirements and level-of-effort for review and release of government records.

If your organization is serious about its work, you can easily move through the 2000 pages in three days — certainly by Noon on Monday. There should be overtime and weekend efforts made to meet your legal obligation. You had ample time and opportunity to lawfully process the records. The burden is now on FCPS.

Your organization's processing error does not incur an obligation/burden upon Judicial Watch and the general public to suffer the consequences for FCPS not complying with the law. There is a compelling, substantial public interest in the requested records.



We propose FCPS make two (2) record productions: Friday, 30 October 2015 by "close of business"; and, Noon on Monday, 2 November 2015.

Thank you for your prompt attention.

Sincerely,

Christopher J. Farrell
Director of Investigations & Research
Judicial Watch
425 3rd Street, SW — Suite 800
Washington, DC 20024
Tel: 202-646-5172

Begin forwarded message:

From: Kirsti Jespersen <kjespersen@JUDICIALWATCH.ORG>
Date: October 28, 2015 at 2:59:48 PM EDT
To: Chris Farrell <CFarrell@JUDICIALWATCH.ORG>
Cc: Kirsti Jespersen <kjespersen@JUDICIALWATCH.ORG>
Subject: **FW: Follow up Response Judicial Watch FOIA**

Chris:

FYI.

--Kirsti J.

From: Reaves, Brandynn [<mailto:bareaves@fcps.edu>]
Sent: Wednesday, October 28, 2015 2:42 PM
To: Kirsti Jespersen
Subject: Follow up Response Judicial Watch FOIA

Dear Ms. Jespersen,

Thank you for your e-mail in which you request a daily rolling production of documents. Unfortunately, we do not have sufficient staff to review the over 2000 documents responsive to your request and provide rolling daily productions to you. Documents responsive to your request are simply too voluminous. You requested documents from all 12 school board members and from all FCPS personnel over an 8 month period.

From: [Reaves, Brandynn](mailto:Reaves.Brandynn)
To: "kjespersen@JUDICIALWATCH.ORG"
Bcc: [Kolb, Sara B.](mailto:Kolb.Sara.B.); [Guilfoyle, Matt](mailto:Guilfoyle.Matt)
Subject: Follow up Response Judicial Watch FOIA
Date: Wednesday, October 28, 2015 2:42:00 PM

Dear Ms. Jespersen,

Thank you for your e-mail in which you request a daily rolling production of documents. Unfortunately, we do not have sufficient staff to review the over 2000 documents responsive to your request and provide rolling daily productions to you. Documents responsive to your request are simply too voluminous. You requested documents from all 12 school board members and from all FCPS personnel over an 8 month period.

Nevertheless, we continue to make diligent and reasonable efforts to produce documents to you and can provide documents to you in three installments, starting this Friday, October 30, Tuesday, November 3, and Friday, November 6.

Please let me know if you agree to this proposed document production schedule.

Sincerely,

Brandynn Reaves

FOIA Officer/ Public Information Specialist
Office of Communications & Community Relations
Fairfax County Public Schools
T +1 571-423-1223 | F +1 571-423-1207

From: Kirsti Jespersen [<mailto:kjespersen@JUDICIALWATCH.ORG>]
Sent: Tuesday, October 27, 2015 6:31 PM
To: Reaves, Brandynn
Cc: Kirsti Jespersen
Subject: RE: Judicial Watch FOIA

Good Evening, Ms. Reaves:

Judicial Watch confirms receipt of the letter. As opposed to complete production on November 6, Judicial Watch requests daily rolling production of completed documents. We will provide daily pick-up service from your Gatehouse facility.

With regards,
Kirsti Jespersen
Investigator
Judicial Watch

From: Reaves, Brandynn [<mailto:bareaves@fcps.edu>]
Sent: Tuesday, October 27, 2015 5:39 PM

Nevertheless, we continue to make diligent and reasonable efforts to produce documents to you and can provide documents to you in three installments, starting this Friday, October 30, Tuesday, November 3, and Friday, November 6.

Please let me know if you agree to this proposed document production schedule.

Sincerely,

Brandynn Reaves

FOIA Officer/ Public Information Specialist
Office of Communications & Community Relations
Fairfax County Public Schools
T +1 571-423-1223 | F +1 571-423-1207

From: Kirsti Jespersen [<mailto:kjespersen@JUDICIALWATCH.ORG>]
Sent: Tuesday, October 27, 2015 6:31 PM
To: Reaves, Brandynn
Cc: Kirsti Jespersen
Subject: RE: Judicial Watch FOIA

Good Evening, Ms. Reaves:

Judicial Watch confirms receipt of the letter. As opposed to complete production on November 6, Judicial Watch requests daily rolling production of completed documents. We will provide daily pick-up service from your Gatehouse facility.

With regards,
Kirsti Jespersen
Investigator
Judicial Watch

From: Reaves, Brandynn [<mailto:bareaves@fcps.edu>]
Sent: Tuesday, October 27, 2015 5:39 PM
To: Kirsti Jespersen
Subject: Judicial Watch FOIA

Good Afternoon Kristi,

Per our conversation, please find the attached letter. Please confirm your receipt of the letter and that you agree to extend the time to produce the requested records.

Sincerely,

Brandynn Reaves

FOIA Officer/ Public Information Specialist
Office of Communications & Community Relations

To: Kirsti Jespersen
Subject: Judicial Watch FOIA

Good Afternoon Kristi,

Per our conversation, please find the attached letter. Please confirm your receipt of the letter and that you agree to extend the time to produce the requested records.

Sincerely,

Brandynn Reaves

FOIA Officer/ Public Information Specialist
Office of Communications & Community Relations
Fairfax County Public Schools
T +1 571-423-1223 | F +1 571-423-1207



FOR IMMEDIATE RELEASE

May 21, 2015

Fairfax County School Board Approves FY 2016 Budget

The Fairfax County School Board has adopted the Fairfax County Public Schools (FCPS) FY 2016 Approved Budget of \$2.6 billion which includes a step increase for all eligible employees and a market scale adjustment of 0.62 percent. The FY 2016 budget is an increase of \$53.9 million, or 2.2 percent, over the FY 2015 Approved Budget.

The budget includes an increase in the County transfer to the School Operating Fund of 3.2 percent, or \$56.7 million, above the FY 2015 Approved Budget, which is \$14.0 million less than requested in FCPS' Advertised Budget. The revenue shortfall is partially offset by an increase in state aid and a reduction in the employer contribution to the Virginia Retirement System. Still, the Board needed to identify an additional \$7.6 million in reductions, which was achieved by reducing the planned 1.0 percent market scale adjustment for employees to 0.62 percent.

"This year's revenue shortfall did not allow us to provide the full 1.0 percent market scale adjustment for employees that we had hoped we could fund, however, we remain resolved and dedicated to have employee compensation competitive with our neighboring school districts," says School Board Chair Tammy Derenak Kaufax. "It is critical that we attract and retain the talented and skilled workforce necessary to support the increasing educational needs of our growing student population."

The FY 2016 Approved Budget, which takes effect July 1, provides for an additional \$22.1 million to cover the cost of enrollment increases and demographic changes, \$4.9 million to implement the new start time schedule for students this fall, and \$3.9 million to address large class sizes in targeted elementary schools. The Approved Budget contains reductions totaling \$61.4 million. Since 2008, FCPS has reduced its operating budget by nearly half a billion dollars and eliminated more than 2,175 positions.

"Looking ahead, the funding challenges we face will continue in FY 2017 with a budget shortfall projected to be more than \$100 million," added Derenak Kaufax. "Without sufficient funding, future reductions will result in direct cuts to programs, requiring difficult choices that will impact our students, schools, and community. We recognize that the Board of Supervisors cares about our great schools and shares our vision to make education our community's top priority. We also recognize that there are no easy answers to our budget challenges. We will continue to work with the Board of Supervisors, along with state and federal representatives, to find solutions that support our students, families, teachers, and staff, maintaining FCPS' reputation for excellence."

Additional budget details are available [online](#).

###

Note: For more information, contact the FCPS Office of Budget Services at 571-423-3600.