

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

THE ASSOCIATED PRESS,
Plaintiff,

v.

Civil Action No. 08-C-835
Judge Louis H. Bloom

STEVEN D. CANTERBURY,
Administrative Director of the
Supreme Court of Appeals of
West Virginia,

Defendant.

2008 SEP 16 PM 2:26
llc

FINAL ORDER

On June 25, 2008, came the plaintiff, the Associated Press ("AP"), by counsel, Patrick McGinley and Sean McGinley, and the defendant, Steven D. Canterbury ("the Defendant"), by counsel, Ancil Ramey, William Wilmoth, Daniel Guida, and Robert Fitzsimmons, for an evidentiary hearing on the AP's Motion for Preliminary and Permanent Injunction and for Declaratory Judgment. Pursuant to the West Virginia Freedom of Information Act ("FOIA"), the AP filed a complaint for declaratory judgment and injunctive relief on the basis that the Defendant improperly withheld certain public records.

Upon mature consideration of the entire record, including the arguments of counsel, the memoranda of the parties, and the pertinent law, the Court is of the opinion that the AP's request for injunctive relief should be granted in part and denied in part for the reasons set forth more fully below.¹

¹ As the injunctive relief provided effectively resolves the dispute between the parties, declaratory relief is unnecessary.

FACTUAL AND PROCEDURAL BACKGROUND

Although this is an action seeking the disclosure of information pursuant to FOIA, this case arises from heightened public attention focused on the relationship between the Honorable Elliot E. Maynard ("Justice Maynard") of the Supreme Court of Appeals of West Virginia and Don L. Blankenship ("Don Blankenship"), Chairman, Chief Executive Officer, and President of Massey Energy Company ("Massey"). In November 2007, the Supreme Court of Appeals of West Virginia decided *Hugh M. Caperton v. A.T. Massey Coal Company, Inc.* by a 3-2 vote in favor of Massey.² Justice Maynard voted with the majority. Subsequently, in December 2007, and January 2008, Caperton filed a Petition for Rehearing and a Motion to Disqualify Justice Maynard. As part of the Motion to Disqualify, Caperton filed pictures of Justice Maynard and Don Blankenship together in Monte Carlo, Monaco. These pictures were taken during the period the *Caperton* matter was pending before the Supreme Court of Appeals. These photos and Caperton's motion received a great deal of public attention, due in part, to the fact that Justice Maynard was a candidate for re-election to the Supreme Court of Appeals.

Shortly after the filing of the Motion to Disqualify and the release of the above-mentioned photographs, the AP filed a FOIA request on January 16, 2008, seeking the following:

All e-mails and phone records for all accounts issued to Justice Elliot E. Maynard, including any cell phones, during the following time periods:

1. June and July, 2006
2. May 2007
3. October and November, 2007
4. January 2008

The AP also wants all visitor logs or comparable records pertaining to Justice Maynard for each of those time periods.

² In 2000, A.T. Massey Coal Company was renamed Massey Energy Company.

The Defendant denied the AP's request. On January 23, 2008, the AP submitted a letter to the Defendant asking for reconsideration. Again, the Defendant denied the AP's request.

On February 29, 2008 the AP submitted a second, more specific, FOIA request, asking for the following information from the period of January 1, 2006 through February 2008:

All records or documents reflecting any and all communication to and/or from and/or between Elliot E. Maynard, Justice Maynard's law clerks and/or administrative assistance and/or secretary, to or from any of the following:

1. Donald L. Blankenship;
2. Brenda Magann; and
3. Anyone acting on behalf of Mr. Blankenship;
4. Any employee or agent of Mr. Blankenship;
5. Any employee or agent of Massey Energy Co., or any of its subsidiaries.

By letter, dated March 7, 2008, the Defendant denied the AP's second FOIA request.

Thereafter, the AP filed a Complaint for Declaratory and Injunctive Relief in the Circuit Court of Kanawha County on April 29, 2008.

On May 12, 2008, a hearing was held on the AP's Motion for a Preliminary Injunction. Due to questions regarding the jurisdiction of the Court, the matter was continued. Subsequently, both parties agreed that the Court is the proper venue and has jurisdiction to resolve the issues in this matter. Thereafter, an evidentiary hearing was held on June 25, 2008, during which time the Court heard oral argument and the testimony of the Defendant Steven D. Canterbury. The Defendant testified that there are documents meeting the description in the AP's FOIA request. The Court ordered the Defendant to produce those documents for *in camera* review.

FINDINGS OF FACT

1. The AP is news organization that serves as a worldwide source of news, photos, graphics, audio and video.

2. The Defendant, Steven D. Canterbury, is the Administrative Director of the Supreme Court of Appeals of West Virginia. He is the custodian of the records at issue.³

3. The records requested by the AP are kept in Kanawha County, West Virginia.

4. Pursuant to FOIA, the AP has requested that the Defendant disclose the following information from the period of January 1, 2006 through February 2008:

All records or documents reflecting any and all communication to and/or from and/or between Elliot E. Maynard, Justice Maynard's law clerks and/or administrative assistants and/or secretary, to or from any of the following:

1. Donald L. Blankenship;
2. Brenda Magann; and
3. Anyone acting on behalf of Mr. Blankenship;
4. Any employee or agent of Mr. Blankenship;
5. Any employee or agent of Massey Energy Co., or any of its subsidiaries

5. There are thirteen documents meeting the description in the AP's FOIA request.

These documents are e-mail communications written by Justice Maynard and sent to Don Blankenship.

6. Five of these e-mails contain information relating to Justice Maynard's campaign for re-election to the Supreme Court of Appeals of West Virginia.⁴

DISCUSSION

Resolution of this case is dependent upon, and requires an interpretation of, the provisions of West Virginia's Freedom of Information Act ("FOIA"). The Defendant asserts that the e-mail communications sought by the AP are not subject to disclosure pursuant to FOIA for the following reasons: (1) application of FOIA to the e-mail communications of judicial

³ Custodian means the elected or appointed official charged with administering a public body. W.Va. Code § 29B-1-2(1) (2008)

⁴ These e-mails are referenced on the *Vaughn* index as follows: (1) Date 11/6/07, Subject: Parkersburg News and Sentinel article link, (2) Date: 10/11/07, Subject: Green Ketchum website link re: firm overview, (3) 10/11/07, Subject: Green Ketchum website link re: firm overview, (4) Date: 10/15/07, Subject: Charleston Daily Mail Kercheval editorial link, and (5) Date 9/21/07, Subject: WV MetroNews website link.

officers would violate the West Virginia Constitution, (2) the e-mail communications of judicial officers are not public records as defined by FOIA and, (3) the e-mail communications at issue are exempt from disclosure as they contain information of a personal nature.

In resolving this matter, it is important to note that the Court is to determine *de novo* the propriety of the Defendant's decision to withhold the records requested by the AP. W.Va. Code § 29B-1-5(2) (2008). Further, the burden is on the Defendant to sustain its action in withholding the requested records. *Id.*

Purpose of FOIA

In analyzing the Defendant's decision to withhold the records requested by the AP, the Court must first consider the purpose of FOIA. Under FOIA, "every person has a right to inspect or copy any public record of a public body in this state." W.Va. Code § 29B-1-3(1) (2008). Through the passage of FOIA, the Legislature sought to permit access to information regarding government affairs based on the following principle:

Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the state of West Virginia that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government they have created. To that end, the provisions of this article shall be liberally construed with the view of carrying out the above declaration of public policy.

W.Va. Code § 29B-1-1 (2008). Based on this illustrative declaration, the Supreme Court of Appeals of West Virginia has noted, "The general policy of [FOIA] is to allow as many public

records as possible to be available to the public.” *Farley v. Worley*, 215 W.Va. 412, 420, 599 S.E.2d 835, 843 (2004) (citing *AT & T Comm’n v. Public Serv. Comm’n*, 188 W.Va. 250, 253, 423 S.E.2d 859, 862 (1992)). Accordingly, public bodies generally have “a responsibility to disclose as much information to the public as [they] can.” *Id.*

Although, FOIA generally provides a right to disclosure of information regarding the affairs of government, the Act also recognizes that legitimate governmental and private interests could be harmed by the disclosure of certain types of information. Therefore, FOIA exempts from disclosure the following:

trade secrets, information of a personal nature contained in personnel, medical, or similar files, certain test questions and examination data, investigative reports of law enforcement agencies, certain manuscripts relating to historical, archeological, or other places, information relating to certain financial institutions, and certain internal memoranda.

W.Va. Code § 29B-1-4 (2008). Given the purpose of FOIA, the Supreme Court of Appeals has held that FOIA’s exemptions are to be strictly construed, whereas, the disclosure provisions of FOIA must be liberally construed. *Syl. pt. 4, Hechler v. Casey*, 175 W.Va. 434, 333 S.E.2d 799 (1985).

With these principles in mind, the Court must consider whether the Defendant properly withheld the documents requested by the AP.

Application of FOIA to the “judicial department”

In justifying its denial of the AP’s FOIA request, the Defendant asserts that FOIA applies to the public records of the judiciary only to the extent of its administrative functions and not to the records of judicial officers themselves. The Defendant does not, however, cite to any language employed in FOIA to support this assertion. Rather, the Defendant broadly asserts that application of FOIA to judicial officers interferes with the independence of the judiciary and is,

therefore, unconstitutional. Specifically, the Defendant cites to Articles V and VIII of the West Virginia Constitution and asserts that application of FOIA to judicial officers would violate separation of powers principles. Conversely, the AP asserts that application of FOIA to the e-mail communications at issue does not implicate constitutional issues, as it would not jeopardize the independence of the judiciary.

Article V, Section 1 of the West Virginia Constitution states as follows, " The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others[.]" This separation of powers acts to ensure that "one department shall not exercise the power nor perform the functions of another." *State ex rel. West Virginia Citizens Action Group v. West Virginia Economic Development*, 213 W.Va. 255, 262, 580 S.E.2d 869, 876 (2003) (citing *State v. Harden*, 62 W.Va. 313, 371-72, 58 S.E. 715, 739 (1907)). Article VIII, Sections 1 and 3 of the West Virginia Constitution delegates the judicial power of the State to the Supreme Court of Appeals and circuit courts, and gives the Supreme Court the power to promulgate rules and to exercise supervisory control over the judiciary.

Based on this constitutional separation of power and delegation of authority, the Defendant asserts that application of FOIA to the e-mail communications of a judicial officer would be unconstitutional "in so far as it encroaches on the ability of the Court to regulate the judiciary." The Defendant has failed, however, to articulate how disclosure of the e-mail communications at issue would affect the judiciary's ability to properly function as an independent branch that administers the law. The AP is not seeking internal communications between judicial officers and law clerks or other court personnel concerning judicial decision-

making.⁵ Rather, the AP has requested documents concerning communications between a judicial officer and a third party, which do not implicate the judiciary's constitutional exercise of judicial power.

Further, the Defendant has failed to articulate how application of FOIA interferes with the Supreme Court's ability to promulgate rules, regulate the judiciary, or exercise supervisory control over the judicial branch. In fact, the Supreme Court has enacted Trial Court Rule 10.04, which addresses access to court files and states as follows:

(a) All persons are... entitled to full and complete information regarding the operation and affairs of the judicial system. Any elected or appointed official or other court employee charged with administering the judicial system shall promptly respond to any request filed pursuant to the West Virginia Freedom of Information Act.

(b) Writings and documents relating to the conduct of the public's business, and which are prepared, owned or retained by a court, circuit clerk, or other court employee, are to be considered "public records."

Accordingly, the Court finds that application of FOIA to the public records of judicial officers does not implicate constitutional concerns regarding separation of powers or improper legislative influence on the judicial decision-making process.

Rather, given FOIA's purpose and liberally construing the definition of a "public body," the Court finds that FOIA does apply to the public records of judicial officers. FOIA defines a "public body" as meaning "*every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission.*" W.Va. Code § 29B-1-2(3) (2008) (emphasis added). As FOIA does not, by its express terms, limit disclosure of public records solely to the administrative functions of the judicial department, the Court finds

⁵ FOIA exempts from disclosure "internal memoranda or letters received or prepared by a public body." W.Va. Code § 29B-1-4(a)(8) (2008). Accordingly, such internal communications and information would clearly reflect the judicial decision making process and would be exempt from disclosure under FOIA.

that FOIA does apply to the public records of judicial officers themselves. As the Supreme Court of Appeals has recognized, "It is not for this [c]ourt to arbitrarily read into [a statute] that which it does not say." *Banker v. Banker*, 196 W.Va. 535, 546-47, 474 S.E.2d 465, 476-77 (1996) (citing *Bullman v. D & R Lumber Company*, 195 W.Va. 129, 464 S.E.2d 771 (1995)). See also, *State ex rel. Frazier v. Meadows*, 193 W.Va. 20, 24, 454 S.E.2d 65, 69 (1994) ("Courts are not free to read into the language what is not there, but rather should apply the statute as written.").

Accordingly, given that the application of FOIA to the public records of judicial officers would not invade the constitutional power of the judiciary, the Court finds that FOIA, by its express terms, applies to judicial officers, as they are "state officers" and members of the "judicial department."

Public record

Next, the Court must consider whether the e-mail communications at issue are public records as defined by FOIA. The Defendant asserts that a "private e-mail by a public official or employee to a private citizen, regarding non-governmental matters, is not a 'public record' subject to disclosure under FOIA." Conversely, the AP asserts that the e-mails at issue, which reflect communications between a judicial officer and the corporate officer of a party-litigant, should be considered public records subject to disclosure because they relate to "an issue of great public interest."

Whether or not the e-mail communications are public records requires an interpretation of FOIA's definition of "public record" and its application. When presented with a matter of statutory interpretation, the Court's primary objective is "to ascertain and give effect to the intent of the Legislature." Syl. Pt. 1, *Smith v. State Workmen's Compensation Com'r*, 159 W.Va. 108,

219 S.E.2d 361 (1975). Upon ascertaining legislative intent, the Court must then consider the precise language employed in the statute. *State ex rel. McGraw v. Combs Services*, 206 W.Va. 512, 518, 526 S.E.2d 34, 40 (1999). When interpreting a statutory provision, the Court is bound to apply, and not construe, the enactment's plain language. The Supreme Court of Appeals has stated, "A statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect." Syl. pt. 2, *State v. Epperly*, 135 W.Va. 877, 65 S.E.2d 488 (1951).

FOIA broadly defines a "public record" as "any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body." W.Va. Code § 29B-1-2(4) (2008). Given the purpose of FOIA, a liberal interpretation should be afforded to the definition of a "public record." *Ogden Newspapers, Inc. v. City of Williamstown*, 192 W.Va. 648, 651, 453 S.E.2d 631, 634 (1994). Furthermore, the Supreme Court of Appeals has recognized that compared with open records laws in other states, the West Virginia FOIA contains a "liberal definition" of "public record" because it does not require that the records be made or received in connection with a law or used in the transaction of public business. See *Daily Gazette Company, Inc. v. Withrow*, 177 W.Va. 110, 115, 350 S.E.2d 738, 743 (1986).

As the parties do not dispute that the e-mail communications were "prepared, owned and retained" by the Defendant, the primary issue before the Court is whether the e-mail communications are writings "containing information relating to the conduct of the public's business." W.Va. Code § 29B-1-2(4). The Defendant asserts that the e-mails are not public records by citing to a number of cases from other jurisdictions, which generally hold that e-mails concerning "private" or "personal matters" are not subject to disclosure under open records law. The cases cited by the Defendant, however, analyze and apply state open records laws with

vastly different definitions of "public records" as compared to West Virginia's. Most of the statutes analyzed in the cases cited by the Defendant employ more restrictive language in defining a "public record" and are of limited value to an analysis of West Virginia law. See generally Andrea G. Nadel, "What are 'records' of agency which must be made available under state freedom of information act", 27 A.L.R.4th 680 (1984).

The AP, however, cites to a case from Idaho, wherein the Idaho Supreme Court analyzed Idaho's open records law, which defines a "public record" in terms similar to those employed by the West Virginia FOIA.⁶ In *Cowles Publishing Company v. Kootenai County Board of Commissioners*, 159 P.3d 896 (Id. 2007), the Idaho Supreme Court was asked to determine whether e-mail communications between a county prosecutor and the manager of the county's juvenile court ("court manager") were public records subject to disclosure under Idaho's open records law. The e-mail communications between the prosecutor and court manager were requested in relation to public attention focused on the financial difficulties of the juvenile court. The prosecutor had hired and supervised the court manager. As the public became aware of the juvenile court's financial problems, the county prosecutor publicly defended the court manager's administration of the finances. In the meantime, local media began to report allegations of an improper relationship between the prosecutor and the court manager. Against this backdrop, a local newspaper made a public records request to the county board of commissioners for all e-mail correspondence between the prosecutor and court manager. Some e-mail communications were disclosed and some were withheld. The newspaper filed suit to obtain access to the

⁶ Idaho Code Ann. § 9-337(13) (2006) defines a "public record" as including, but not limited to, "any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics."

remaining e-mails. The trial court ordered that all of the e-mail communications should be released as public records. This decision was appealed.

Before the Idaho Supreme Court, the county manager argued that the e-mails were not public records as they were "personal e-mails." After considering the purpose of open records laws and the definition of a "public record", the Idaho Supreme Court determined that the e-mails between the county prosecutor and court manager did contain information relating to the conduct and administration of the public's business and should be disclosed. *Id.* at 900-901. Specifically, the Idaho Supreme Court noted that it was not simply the fact the e-mails were sent and received while the county employees were at work; nor was it the fact that the e-mails were prepared on government equipment. *Id.* at 901. Rather, considering the particular facts of the case, the *Cowles* court found that because the prosecutor publicly defended the actions of the court manager, with whom he was allegedly engaged in a relationship, the e-mails did contain information relating to the conduct of the public's business as the public had an interest in knowing the motivation for prosecutor's defense of the court manager. *Id.*

As West Virginia law employs a similar definition of a "public record", the Court agrees with the Idaho Supreme Court's determination that the determinative fact in this case should not be that the e-mails were prepared on and sent from a government e-mail account. Rather, considering the purpose of FOIA, the definition of a "public record", and the facts of the case presented, the Court finds that both the *content* of the e-mails at issue and the *context* under which they were created are relevant to the determination of whether they contain information

relating to the conduct of the public's business.⁷

With these considerations in mind, the Court concludes that the five e-mail communications regarding Justice Maynard's campaign for re-election are public records subject to disclosure under FOIA. As his campaign for public office is related to the method by which the people "retain control over the instruments of the government they have created," these e-mails contain information relating to the conduct of the public's business and should be disclosed as public records of a public body. W.Va. Code § 29B-1-1.⁸ The Court concludes, however, that the remaining e-mail communications are not public records as defined by FOIA. In no way do these e-mails contain information related to the "affairs of government", Justice Maynard's "official acts" as a state officer, or the conduct of the public's business.⁹

Accordingly, the Court concludes that the five emails concerning Justice Maynard's campaign for re-election are public records of a public body and must be disclosed pursuant to FOIA.

⁷ As a public record is defined as "any writing *containing* information relating to the conduct of the public's business" the mere existence of these e-mails is not sufficient to find that they are public records. As the plain meaning of the term "contain" is "to have within," it was necessary, in this case, to conduct an *in camera* review to determine whether the e-mails contained information relating to the conduct of the public's business. The Court is cognizant that in other cases *in camera* review may be burdensome, in both time and cost, however, given the definition of "public record" and the facts of the case presented, the Court believes *in camera* review of the e-mails was required in this case.

⁸ Without further direction from the Legislature, the Court focused on FOIA's Declaration of Policy for guidance in determining what is and what is not the "conduct of the public's business". See W.Va. § Code 29B-1-1.

⁹ It is important to note that had Justice Maynard not recused himself from the *Caperton* case, and other cases involving Massey, these e-mails would have been placed into the public's business by Caperton's Motion to Recuse and the public release of the photographs of Justice Maynard and Don Blankenship. Because the information contained within the e-mail communications would have shed light on the extent of Justice Maynard's relationship with Don Blankenship and whether or not that relationship may have affected or influenced Justice Maynard's decision-making in Massey cases, the public would have been entitled to that information. Justice Maynard did, however, recuse himself. Therefore, the Court finds that the remaining e-mails do not contain information relating to the conduct of the public's business.

Personal Information Exemption

Finally, the Defendant asserts that if the e-mail communications are "public records" they should be exempt from disclosure under FOIA as they contain information of a personal nature.¹⁰

Specifically FOIA exempts from disclosure the following:

Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance...

W.Va. Code § 29B-1-4(a)(2) (2008). In analyzing the purpose of this exemption, the Supreme Court of Appeals has stated, "The primary purpose of the invasion of privacy exemption is to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." Syl. pt. 6, *Hechler v. Casey*, 175 W.Va. 434, 333 S.E.2d 799 (1985). Further, an authority considering the purpose of the personal information exemption has indicated that this exemption is intended to apply when an individual is *required* to submit information of an intimate nature to public bodies. Alfred S. Neely, IV, *Administrative Law in West Virginia* §7.09 (1982).

Strictly construing the personal information exemption, the Court concludes that the five e-mail communications containing information relating to Justice Maynard's campaign for re-election do not contain the type of information sought to be protected by this exemption. These e-mails do not contain information such as that kept in a "personal, medical or similar file."

¹⁰ When the Defendant originally denied the AP's FOIA request he did not claim that the e-mails were exempt from disclosure under FOIA. The Defendant only raised the personal information exemption after the AP filed for injunctive relief. If the Defendant believed that the documents contained personal information when he received the AP's request, he was required to produce a *Vaughn* index, providing "a relatively detailed justification as to why each document is exempt, specifically identifying the reason(s) why an exemption under W. Va. Code, 29B-1-4 is relevant." Syl. pt. 6, *Farley v. Worley*, 215 W.Va. 412, 599 S.E.2d 835 (2004). Additionally, the Defendant should have submitted "an affidavit, indicating why disclosure of the documents would be harmful and why such documents should be exempt." *Id.* Nevertheless, the Court will consider whether the personal information exemption applies to the information contained within the public records at issue.

Nor would disclosure of the information contained within these e-mails constitute an unreasonable invasion of privacy or result in injury or embarrassment. Furthermore, this is not the type of intimate information that is *required* to be submitted to a public body. Accordingly, the Court concludes that the five e-mail communications containing information relating to Justice Maynard's campaign for re-election are not exempt under the personal information exemption.

CONCLUSIONS OF LAW

1. FOIA provides that "every person has a right to inspect or copy any public record of a public body in this state." W.Va. Code § 29B-1-3 (1).

2. Through the passage of FOIA, the Legislature sought to permit access to information regarding government affairs based on the principle that the people, in a democratic system of government, must remain informed so they may "retain control over the instruments of government they have created." W.Va. Code § 29B-1-1. Accordingly, the disclosure provisions of FOIA must be liberally construed, whereas, FOIA's exemptions are to be strictly construed. Syl. pt. 4., *Hechler v. Casey*, 175 W.Va. 434, 333 S.E.2d 799.

3. A public body is defined as meaning "*every state officer*, agency, department, including the executive, legislative and *judicial departments*, division, bureau, board and commission." W.Va. Code § 29B-1-2(3) (emphasis added). Liberally construing this definition, and considering the purpose behind FOIA, a judicial officer should be subject to FOIA as a "state officer" and member of a "public body." Additionally, application of FOIA to the public records of judicial officers does not invade or interfere with the constitutional power of the judiciary.

4. FOIA broadly defines a "public record" as "any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body." W.Va. Code § 29B-1-2(4).

5. As compared with open records laws in other states, the West Virginia FOIA contains a "liberal definition" of "public record" because it does not require that the records be made or received in connection with a law or used in the transaction of public business. See *Daily Gazette Company, Inc. v. Withrow*, 177 W.Va. 110, 115, 350 S.E.2d 738, 743.

6. Considering the purpose behind FOIA, the definition of a "public record", and the facts of the case presented, the Court concludes that the five e-mails containing information relating to Justice Maynard's campaign for re-election to the Supreme Court of Appeals are public records and must be disclosed as they are writings "containing information relating to the conduct of the public's business." The remaining e-mails, however, do not contain information relating to the conduct of the public's business and are not public records.

7. Although FOIA exempts from disclosure "information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy," the Court concludes that none of the public records at issue contain the type of information sought to be protected by this exemption.

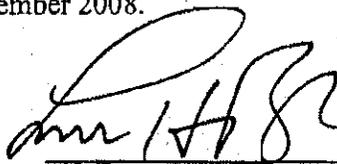
DECISION

For the reasons set forth above, the AP's request for injunctive relief is hereby **GRANTED IN PART** and **DENIED IN PART**. It is **ORDERED** that the Defendant must disclose the five public records identified herein within 10 days of entry of this Order, unless sooner stayed by Order of the Supreme Court of Appeals of West Virginia. There being nothing further, this action is hereby **DISMISSED** and **STRICKEN** from the docket.

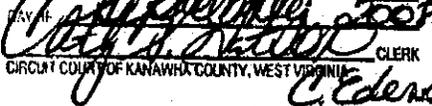
The objections of any party aggrieved by entry of this Order are noted and preserved.

The Clerk is directed to forward copies of this Order to all counsel of record.

ENTERED this 16th day of September 2008.



Louis H. Bloom, Judge

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY E. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 16th
DAY OF SEPTEMBER 2008.


C. Gatson
CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA