

EXHIBIT A

**DECLARATION OF REVEREND COZY BAILEY IN SUPPORT OF
PLAINTIFF’S PETITION FOR DECLARATORY JUDGMENT AND MANDAMUS**

I, Cozy Bailey, being over 18 years of age and competent to testify, hereby declare as follows:

1. I am a citizen of Virginia and the President of the Virginia State Conference NAACP (“Virginia NAACP”). I have personal knowledge of the facts set forth below.

2. The Virginia NAACP is one of Virginia’s oldest and most prominent organizations that advocates for civil and voting rights in the Commonwealth.

3. On April 21, 2023, Martin Brown, Virginia’s Chief Diversity, Equity, and Inclusion Officer, appointed by Governor Glenn A. Youngkin (“Governor Youngkin”), gave remarks at a mandatory training on diversity, equity, and inclusion (“DEI”) for the Virginia Military Institute’s faculty and staff. In these remarks, Brown said, “Let’s take a moment right now to kill that cow. DEI is dead. We’re not going to bring that cow up anymore. It’s dead. It was mandated by the General Assembly, but this governor has a different philosophy...” Martin D. Brown, Chief Diversity Officer, Virginia Governor’s Office, Address at Virginia Military Institute’s “Inclusive Excellence” Training (Apr. 21, 2023), *available at* <https://vmi.app.box.com/s/y9qjy1fgz5zlm6vg2ntv2kg6gupb6b>.

4. The Virginia NAACP was shocked and amazed at these remarks and reviewed publicly available records and news reports to obtain a better understanding but decided that it needed more information to determine whether Governor Youngkin, Brown, and the Commonwealth of Virginia were acting in accordance with statutorily required mandates related to DEI. See Va. Code § 2.2-435.12.

5. To obtain more information about Governor Youngkin’s Administration’s

compliance with Virginia’s DEI statute, on August 31, 2023, the Virginia NAACP transmitted a letter to the Office of the Governor’s Virginia Freedom of Information Act (“VFOIA”) Officer requesting public records and correspondence of the DEI office under VFOIA (“VFOIA request letter”). Ex. B.

6. After sending the VFOIA request letter, on September 8, 2023, the Virginia NAACP was contacted by VFOIA Officer Denise Burch, who responded that the office was in “receipt” of the NAACP’s request and invoked the seven-day provision under Va. Code § 2.2-3704B4. Ex. D.

7. On September 14, 2023, Burch, rather than responding to the requests as statutorily prescribed under VFOIA (*see* Va. Code § 2.2-3704B4), claimed the costs and time it would take to review the requested records were too substantial, without providing any specific estimate, and invited the Virginia NAACP to revise its requests. Officer Burch also stated that “[s]hould you desire to stand on your current requests, we will promptly calculate an advance determination of the amount of a required deposit.” Ex. D.

8. On September 22, 2023, the Virginia NAACP, acting in good faith, submitted a revised request with changes to further limit and clarify the records it was seeking. The Virginia NAACP also requested an estimate of the costs of providing the documents. Ex. C.

9. On September 28, 2023, Burch responded by claiming the scope of the revised VFOIA request was overly broad and again failed to respond to the requests as statutorily prescribed under VFOIA. *See* Va. Code § 2.2-3704B4. Further, Burch failed to provide a calculation of the amount of a required deposit as previously promised. Ex. D.

10. On October 4, 2023, the Virginia NAACP again asked Defendants for a cost estimate to provide the requested documents. Ex. D.

11. On October 4, 2023, Burch responded by asking a vague question about whether the Virginia NAACP was providing “electronic search terms.” Once again Burch refused to respond to the requests as statutorily prescribed under VFOIA and did not provide a cost estimate. Ex. D.

12. On October 10, 2023, the Virginia NAACP responded by asking Defendants for a cost estimate. Ex. D.

13. On October 27, 2023, the Virginia NAACP followed up by laying out the statutory requirements of VFOIA and requested a good faith estimate of the costs of providing the requested documents. Ex. D.

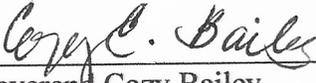
14. On October 27, 2023, Burch’s response again failed to comply with VFOIA and did not provide a cost estimate. Instead, Burch suggested that the VFOIA statute requires the Virginia NAACP to submit “search terms” before a response or cost estimate must be provided. Burch added, “[W]e do not believe it would be a proper use of taxpayer funded time for state employees” to complete the request as submitted. Burch further stated, “We would be happy to submit the search term issue to a Court if that is your preference.” Ex. D.

15. Throughout the entire correspondence between the Virginia NAACP and Governor Youngkin’s office and up to the filing of this Petition Defendants have failed to provide a single record, even after the Virginia NAACP voluntarily revised its request at the Defendants’ behest. Furthermore, Defendants have failed at all times to provide a statutorily required response or estimate of the costs were provided even though Burch promised that her office would promptly calculate a cost estimate.

I hereby declare under penalty of perjury of the laws of the United States that the foregoing statements are true and correct.

Date: April 9, 2024

Respectfully submitted,



Reverend Cozy Bailey

EXHIBIT B



August 31, 2023

By Email

FOIA Officer
Office of the Governor
Patrick Henry Building
1111 East Broad Street
Richmond, Virginia 23219
FOIA@governor.virginia.gov

Dear FOIA Officer:

The Virginia State Conference NAACP requests public records, listed below, concerning the Governor of Virginia, the Commonwealth Director of Diversity, Equity, and Inclusion Martin Brown (hereinafter "Director Brown"), and the Office of Diversity, Equity, and Inclusion ("DEI Office") (renamed "Diversity, Opportunity, and Inclusion."). This is a request under Virginia's Freedom of Information Act, Va. Code § 2.2-3700 *et seq.*, common law, and any other statute providing for public access to public information.

Please respond individually to each numerical request noting whether (1) responsive records have been provided, (2) no responsive records exist, or (3) responsive records are being withheld. If a record does not exist, or exists but is not in the possession of the Office of the Governor, please explicitly say so, and indicate which office, if any, is in possession of the record. Please provide redacted documents wherever non-exempt information is commingled with exempt information, and provide detail to the fullest extent possible the subject and volume of any withheld information. If responsive records are withheld in full or redacted in part, please specify each statutory exemption you believe justifies the nondisclosure and provide a description of the contents withheld, including subject matter, number of pages, and the date(s) of the document(s).

Please include any responsive records in the possession of the Office of the Governor, regardless of who created them. Unless otherwise noted, this request covers all public records as defined in Va. Code § 2.2-3701, including all drafts and preliminary versions of such records, from March 5, 2020, through the date of your response. Specifically, we request:

1. All records concerning the creation of the DEI Office, regardless of the date.
2. All records concerning the goals and objectives of the DEI Office, regardless of the date.
3. All correspondence, including but not limited to, documents, records, messages, calendar invites, attachments, and materials sent to or from the email address diversityopportunityandinclusion@governor.virginia.gov.
4. All records identifying or describing the responsibilities of the DEI Office, regardless of the date.

5. All records evidencing any and all guidelines, procedures, policies, practices, manuals, training materials, transition documents, and other records governing the DEI Office's operation since January 15, 2022.
6. All records concerning the decision to substitute the word "Opportunity" for "Equity" in the DEI Office's title and Director's title. This request includes records reflecting the authority, policies, process, or procedures pursuant to which the title was adopted and changed.
7. All records concerning the development and decision-making process that led to the description found on the website diversity.virginia.gov, under "Who We Are," including records reflecting proposed versions, suggestions, edits, comments, and drafts of the description, as well as all records reflecting deliberations leading to the adoption of this language. This request includes records reflecting the policies, process, or procedures pursuant to which the website language was adopted and changed.
8. All records reflecting communications relating to the adoption of and changes made to the website language and title referenced in Requests No. 6-7 from any public or private individual or entity.
9. All records reflecting formal administrative actions taken by the DEI Office or the establishment of new commissions or boards that report to the DEI Office.
10. All records relating to the development, adoption, or implementation of a Strategic Plan by the DEI Office pursuant to Va. Code § 2.2-435.12. This request includes records reflecting priorities, goals, objectives, projects, or initiatives proposed by the DEI Office, and all studies, reports, or other records reflecting their expected impacts or effects, whether or not such matters were ultimately incorporated into or otherwise made part of a Strategic Plan.
11. All records relating to efforts considered or taken to identify any "systemic inequities in state government practices" by the DEI Office; descriptions of systemic inequities the DEI Office identified; and actions taken by the Office to address such inequities, whether formally or informally. See Va. Code § 2.2-435.12.
12. All records identifying or describing efforts undertaken and methods used by the DEI Office for receiving feedback and suggestions from state employees, external stakeholders, and community leaders, pursuant to Va. Code § 2.2-435.12. This request includes records reflecting actions considered or taken by the DEI Office to identify additional methods for receiving feedback and the reason(s) why such methods for receiving feedback were implemented or not implemented.
13. All records concerning feedback or suggestions received by the DEI Office from state employees, external stakeholders, and community leaders, whether formal or informal.
14. All records concerning actions considered or taken by the DEI Office to identify, develop, support, promote, or oppose "concrete equity policy." See Va. Code § 2.2-435.12.

15. All records relating to efforts considered or taken to identify “inclusive practices” by the DEI Office, descriptions of inclusive practices identified by the DEI Office, and actions considered or taken by the DEI Office to promote or oppose such practices, whether formally or informally. See Va. Code § 2.2-435.12.
16. All records concerning the development, adoption, or implementation of a “sustainable framework to promote inclusive practices across state government,” Va. Code § 2.2-435.12.
17. All records concerning any issues, complaints, errors, or problems with the DEI Office that in any way affected the creation of a Strategic Plan or other goals of the DEI Office.
18. All records of communications between the DEI Office or the Office of the Governor and the Virginia Military Institute concerning the Virginia Military Institute’s Office of Diversity, Opportunity, and Inclusion or programs and trainings related to diversity, equity, or inclusion.
19. All records of communications between the DEI Office or the Office of the Governor and any public higher educational institutions concerning programs and trainings related to diversity, equity, or inclusion.
20. All records concerning Director Brown’s attendance or presentation at the Virginia Military Institute’s inclusive excellence training on April 12, 2023, including the invitation to attend, any records related to the decision for Director Brown to attend, and any planning or preparation prior to his attendance.
21. Any recordings or transcripts of Director Brown’s presentation at VMI on April 12, 2023.
22. All records relating to prior, current, and planned or proposed future actions of the DEI Office to respond to or address any aspect or impact of the statements made by Director Brown at the Virginia Military Institute on April 12, 2023.
23. All reports by the DEI Office to the Governor’s Office, the General Assembly, or any other legislative members, bodies, or executive officials or agencies.
24. All communications between the DEI Office and the Governor’s Officer, the General Assembly, or any other legislative members, bodies, or executive officials or agencies.
25. All press releases or public statements concerning the DEI Office since January 15, 2022, including, but not limited to, background material used to draft press releases or public statements, video and audio recordings of press statements or other public statements, and records evidencing approvals and non-approvals of press releases and public statements.
26. For each of the DEI Office’s former and current officers, officials, or employees, records identifying the name, position, job classification, official salary, or rate of pay of such officer, official, or employee.
27. All records reflecting the duties and responsibilities of each former or current job position within the DEI Office, including, but not limited to, organizational charts, job postings, notices of vacancy, and job descriptions.

28. All records reflecting any oaths of office or conflicts of interest statements presented to and/or signed by any former or current officer, official, or employee of the DEI Office.
29. All records reflecting complaints received, whether formal or informal, about the DEI Office and the DEI Office's decision, response, or action(s) considered or taken as a result of the complaint.
30. All records of communications between the DEI Office and the Spirit of VMI PAC, Matt Daniel, or any other member of the Spirit of VMI PAC.

If your office does not maintain certain requested public records, please let us know who does and include the proper custodian's name and address. We prefer to receive copies of all records electronically, so long as the records are legible. Please send all responsive documents via email to president@naacpva.org, and please copy the individuals listed in the cc section of this request. Consistent with the Act, we are prepared to pay for the actual cost of collection and copying the requested records, and ask that you provide an estimate of such costs, should they exceed \$200, in advance of supplying the requested records.

Consistent with the Act, your office must respond to this request within five (5) working days beginning the day after receipt. If it is logistically impossible for you to fully respond to this request within the five-day period, your office must state this in writing and explain the circumstances necessitating an extension of no more than seven (7) additional working days to fully respond.

Thank you for your attention and cooperation with this request.

Sincerely,



Robert N. Barnette, Jr
President
president@naacpva.org

cc: Katy Youker (kyouker@lawyerscommittee.org)
Janette McCarthy-Wallace (jlouard@naacpnet.org)
Anthony Ashton (aashton@naacpnet.org)
Anna Kathryn Barry (abarnes@naacpnet.org)

EXHIBIT C



September 22, 2023

By Email

FOIA Officer
Office of the Governor
Patrick Henry Building
1111 East Broad Street
Richmond, Virginia 23219
FOIA@governor.virginia.gov

Dear FOIA Officer:

The Virginia State Conference NAACP requests public records, listed below, concerning the Governor of Virginia, the Commonwealth Director of Diversity, Equity, and Inclusion Martin Brown (hereinafter “Director Brown”), and the Office of Diversity, Equity, and Inclusion (“DEI Office”) (renamed “Diversity, Opportunity, and Inclusion.”). This is a request under Virginia’s Freedom of Information Act, Va. Code § 2.2-3700 *et seq.*, common law, and any other statute providing for public access to public information.

Please respond individually to each numerical request noting whether (1) responsive records have been provided, (2) no responsive records exist, or (3) responsive records are being withheld. If a record does not exist, or exists but is not in the possession of the Office of the Governor, please explicitly say so, and indicate which office, if any, is in possession of the record. Please provide redacted documents wherever non-exempt information is commingled with exempt information, and provide detail to the fullest extent possible the subject and volume of any withheld information. If responsive records are withheld in full or redacted in part, please specify each statutory exemption you believe justifies the nondisclosure and provide a description of the contents withheld, including subject matter, number of pages, and the date(s) of the document(s).

Please include any responsive records in the possession of the Office of the Governor, regardless of who created them. Unless otherwise noted, this request covers all public records as defined in Va. Code § 2.2-3701, including all drafts and preliminary versions of such records, from March 5, 2020, through the date of your response. Specifically, we request:

1. All records concerning the creation of the DEI Office, regardless of the date.
2. All records concerning the goals and objectives of the DEI Office, regardless of the date.
3. All correspondence, including but not limited to, documents, records, messages, attachments, and materials sent to or from the email address diversityopportunityandinclusion@governor.virginia.gov with Director Brown, former Secretary

of the Commonwealth Kay C. James, former Virginia Military Institute Chief Diversity Officer Jamica Love, or the Commonwealth's Board of Elections

4. All records describing the responsibilities that the DEI Office is required to perform in order to meet its statutory obligations, regardless of the date.
5. All records evidencing any and all manuals, training materials, or transition documents related to the DEI Office's fulfillment of its statutory responsibilities since January 15, 2022.
6. All records concerning the decision to substitute the word "Opportunity" for "Equity" in the DEI Office's title and Director's title. This request includes records reflecting the authority, policies, process, or procedures pursuant to which the title was adopted and changed.
7. All records concerning the development and decision-making process that led to the description found on the website diversity.virginia.gov, under "Who We Are," including records reflecting proposed versions, suggestions, edits, comments, and drafts of the description, as well as all records reflecting deliberations leading to the adoption of this language. This request includes records reflecting the policies, process, or procedures pursuant to which the website language was adopted and changed.
8. All records reflecting communications relating to the adoption of and changes made to the website language and title referenced in Requests No. 6-7 from any public or private individual or entity.
9. All records reflecting formal administrative actions taken by the DEI Office or the establishment of new commissions or boards that report to the DEI Office.
10. All records relating to the development, adoption, or implementation of a Strategic Plan by the DEI Office pursuant to Va. Code § 2.2-435.12. This request includes records reflecting priorities, goals, objectives, projects, or initiatives proposed by the DEI Office, and all studies, reports, or other records reflecting their expected impacts or effects, whether or not such matters were ultimately incorporated into or otherwise made part of a Strategic Plan.
11. All records relating to efforts considered or taken to identify any "systemic inequities in state government practices" by the DEI Office; descriptions of systemic inequities the DEI Office identified; and actions taken by the Office to address such inequities, whether formally or informally. See Va. Code § 2.2-435.12.
12. All records identifying or describing efforts undertaken and methods used by the DEI Office for receiving feedback and suggestions from state employees, external stakeholders, and community leaders, pursuant to Va. Code § 2.2-435.12. This request includes records reflecting actions considered or taken by the DEI Office to identify additional methods for receiving feedback and the reason(s) why such methods for receiving feedback were implemented or not implemented.

13. All records concerning feedback or suggestions received by the DEI Office from state employees, external stakeholders, and community leaders, whether formal or informal.
14. All records concerning actions considered or taken by the DEI Office to identify, develop, support, promote, or oppose “concrete equity policy.” See Va. Code § 2.2-435.12.
15. All records relating to efforts considered or taken to identify “inclusive practices” by the DEI Office, descriptions of inclusive practices identified by the DEI Office, and actions considered or taken by the DEI Office to promote or oppose such practices, whether formally or informally. See Va. Code § 2.2-435.12.
16. All records concerning the development, adoption, or implementation of a “sustainable framework to promote inclusive practices across state government,” Va. Code § 2.2-435.12.
17. All records reflecting any barriers that in any way affected the creation of a Strategic Plan or other goals of the DEI Office.
18. All records of communications between the DEI Office or the Office of the Governor and the Virginia Military Institute concerning the Virginia Military Institute’s Office of Diversity, Opportunity, and Inclusion or programs and trainings related to diversity, equity, or inclusion.
19. All records of communications between the DEI Office or the Office of the Governor and any public higher educational institutions concerning programs or trainings related to diversity, equity, or inclusion.
20. All records concerning Director Brown’s attendance or presentation at the Virginia Military Institute’s inclusive excellence training on April 12, 2023, including the invitation to attend, any records related to the decision for Director Brown to attend, and any planning or preparation prior to his attendance.
21. Any recordings or transcripts of Director Brown’s presentation at VMI on April 12, 2023.
22. All records relating to prior, current, and planned or proposed future actions of the DEI Office to respond to or address any aspect or impact of the statements made by Director Brown at the Virginia Military Institute on April 12, 2023.
23. All reports by the DEI Office to executive officials or agencies, including but not limited to the Department of Education.
24. All communications between the DEI Office and executive officials or agencies, including but not limited to the Department of Education.
25. All press releases or public statements concerning the DEI Office since January 15, 2022, including, but not limited to, background material used to draft press releases or public statements, video and audio recordings of press statements or other public statements, and records evidencing approvals and non-approvals of press releases and public statements.

26. For each of the DEI Office's former and current officers, officials, or employees, records identifying the name, position, job classification, official salary, or rate of pay of such officer, official, or employee.
27. All records reflecting the duties and responsibilities of each former or current job position within the DEI Office, including, but not limited to, organizational charts, job postings, notices of vacancy, and job descriptions.
28. All records reflecting any oaths of office or conflicts of interest statements presented to and/or signed by any former or current officer, official, or employee of the DEI Office.
29. All records reflecting complaints received, whether formal or informal, about the DEI Office and the DEI Office's decision, response, or action(s) considered or taken as a result of the complaint.
30. All records of communications between the DEI Office and the Spirit of VMI PAC, Matt Daniel, or any other member of the Spirit of VMI PAC.
31. All records of trainings or other materials provided by the DEI Office to other state or local government agencies or higher education institutions in furtherance of the DEI Office's statutory duties.

If your office does not maintain certain requested public records, please let us know who does and include the proper custodian's name and address. We prefer to receive copies of all records electronically, so long as the records are legible. Please send all responsive documents via email to president@naacpva.org, and please copy the individuals listed in the cc section of this request. Consistent with the Act, we are prepared to pay for the actual cost of collection and copying the requested records, and ask that you provide an estimate of such costs, should they exceed \$200, in advance of supplying the requested records.

Consistent with the Act, your office must respond to this request within five (5) working days beginning the day after receipt. If it is logistically impossible for you to fully respond to this request within the five-day period, your office must state this in writing and explain the circumstances necessitating an extension of no more than seven (7) additional working days to fully respond.

Thank you for your attention and cooperation with this request.

Sincerely,



Robert N. Barnette, Jr
President

president@naacpva.org

cc: Katy Youker (kyouker@lawyerscommittee.org)
Janette McCarthy-Wallace (jlouard@naacpnet.org)
Anthony Ashton (aashton@naacpnet.org)
Anna Kathryn Barry (abarnes@naacpnet.org)

EXHIBIT D

From: Governor's FOIA Office <FOIA@governor.virginia.gov>
Sent: Friday, October 27, 2023 2:26 PM
To: kjones@naacpva.org
Subject: RE: FOIA Request: The Office of Diversity, Equity, and Inclusion

Dear Ms. Jones,

On September 28, 2023, we informed you: "The Virginia FOIA Act requires records to be described with reasonable particularity. Virginia Code Section 2.2-3704B. A request that implicates every document held by the DOI Office does not meet that requirement or even permit a reasonable cost estimate." We also solicited reasonably limited search terms. You have never acknowledged that request. Furthermore, we do not believe it would be a proper use of taxpayer funded time for state employees to go through thousands of documents – many of which we know are not instructive when it makes so much common sense for you to provide search terms, which would substantially reduce the number of superfluous documents not helpful to your inquiry. We have asked you repeatedly for search terms and do not understand why you refuse to provide them, a practice followed by nearly every organization seeking a broad range of documents.

We would be happy to submit the search term issue to a Court if that is your preference.

Denise Burch
FOIA Officer
Officer of Governor Glenn Youngkin
1111 E. Broad Street
Richmond, VA 23219
804-786-2211

From: kjones@naacpva.org <kjones@naacpva.org>
Sent: Friday, October 27, 2023 7:22 AM
To: Governor's FOIA Office <FOIA@governor.virginia.gov>
Cc: president@naacpva.org; 'Ashton, Anthony' <aashton@naacpnet.org>; 'McCarthy Wallace, Janette' <jlouard@naacpnet.org>; 'Ghee, James E.' <JEghee@embarqmail.com>; 'Katy Youker' <kyouker@lawyerscommittee.org>; cbailey@naacpva.org; 'Anna Kathryn Barnes' <abarnes@naacpnet.org>
Subject: RE: FOIA Request: The Office of Diversity, Equity, and Inclusion

Dear Ms. Burch,

As you know, Va. Code 2.2-3704 requires that a public body respond to a FOIA request within five days by either providing the requested records or making one of four listed responses. Our request was sent Aug. 31. On Sept. 8, your office invoked the seven-day extension. On Sept. 14, we received an email from your office notifying us that the costs were estimated to exceed \$200. On Sept. 22, we revised our request for records and requested that your office provide an estimate of the costs to fulfill the request. We have repeated our request for a cost estimate twice since submitting our revised request for records. To date, we have not received an estimate of the costs. At this point, nearly two months from the date we submitted our request, your office has far exceeded the statutory time for providing a response.

Please provide a good faith estimate of the costs no later than Oct. 27. If we do not hear from you by then, we will assume that you do not intend to timely respond to our request and will consider our other options, including seeking relief from the court.

Thank you for your cooperation.
Karen

Karen E Jones

Director of Administration

Virginia State Conference NAACP

(540) 440-4740 kjones@naacpva.org

Atarah McCoy

Subject: FW: FOIA Request: The Office of Diversity, Equity, and Inclusion
Attachments: 10.04.2023 VSC NAACP Letter to Governor - FOIA DEI Invoice Request.pdf

From: kjones@naacpva.org <kjones@naacpva.org>
Sent: Tuesday, October 10, 2023 7:13 PM
To: 'Governor's FOIA Office' <FOIA@governor.virginia.gov>
Cc: president@naacpva.org; aashton@naacpnet.org; jlouard@naacpnet.org; 'Ghee, James E.' <JEghee@embarqmail.com>; Katy Youker <kyouker@lawyerscommittee.org>; cbailey@naacpva.org; abarnes@naacpnet.org
Subject: RE: FOIA Request: The Office of Diversity, Equity, and Inclusion

[EXTERNAL EMAIL] This email originated outside the organization. Do not click any links or open any attachments unless you can verify the legitimacy.

Hello!

Thank you for your response, but we would like to request an estimate of the cost and any required deposit as soon as possible but no later than October 12, 2023.

Thank you!

Karen E Jones

Director of Administration

Virginia State Conference NAACP

(540) 449-4742 | kjones@naacpva.org

From: Governor's FOIA Office <FOIA@governor.virginia.gov>
Sent: Wednesday, October 4, 2023 2:22 PM
To: kjones@naacpva.org; Governor's FOIA Office <FOIA@governor.virginia.gov>
Cc: president@naacpva.org; 'Ashton, Anthony' <aashton@naacpnet.org>; 'McCarthy Wallace, Janette' <jlouard@naacpnet.org>; 'Ghee, James E.' <JEghee@embarqmail.com>; 'Katy Youker' <kyouker@lawyerscommittee.org>; cbailey@naacpva.org; Anna Kathryn Barnes <abarnes@naacpnet.org>
Subject: RE: FOIA Request: The Office of Diversity, Equity, and Inclusion

Thank you for your email from this morning.

Please clarify whether this means that you are declining to provide us with any electronic search terms.

Denise Burch

FOIA Officer
Officer of Governor Glenn Youngkin
1111 E. Broad Street
Richmond, VA 23219
804-786-2211



October 4, 2023

By Email

FOIA Officer
Office of the Governor
Patrick Henry Building
1111 East Broad Street
Richmond, Virginia 23219
FOIA@governor.virginia.gov

Dear FOIA Officer:

Thank you for your correspondence to our revised FOIA request sent on September 22, 2023. When sending our revised FOIA, we requested that you provide an estimate of the cost and any required deposit as soon as possible but no later than September 28, 2023.

We are renewing our request; if, after reviewing the revised request, you determine that the cost will exceed \$200, please provide an estimate of the cost and any required deposit as soon as possible but no later than October 9, 2023.

Sincerely,

A handwritten signature in cursive script that reads "Robert N. Barnette, Jr.".

Robert N. Barnette, Jr
President

From: kjones@naacpva.org <kjones@naacpva.org>
Sent: Wednesday, October 4, 2023 8:09 AM
To: Governor's FOIA Office <FOIA@governor.virginia.gov>
Cc: president@naacpva.org; 'Ashton, Anthony' <aashton@naacpnet.org>; 'McCarthy Wallace, Janette' <jlouard@naacpnet.org>; 'Ghee, James E.' <JEghee@embarqmail.com>; 'Katy Youker' <kyouker@lawyerscommittee.org>; cbailey@naacpva.org; Anna Kathryn Barnes <abarnes@naacpnet.org>
Subject: RE: FOIA Request: The Office of Diversity, Equity, and Inclusion

Dear Ms. Burch,

Thank you for your correspondence to our revised FOIA request sent on September 22, 2023. When sending our revised FOIA, we requested that you provide an estimate of the cost and any required deposit as soon as possible but no later than September 28, 2023.

We are renewing our request; if, after reviewing the revised request, you determine that the cost will exceed \$200, please provide an estimate of the cost and any required deposit as soon as possible but no later than October 9, 2023.

Karen E Jones

Director of Administration

Virginia State Conference NAACP

(540) 449-4742 | kjones@naacpva.org

From: Governor's FOIA Office <FOIA@governor.virginia.gov>
Sent: Thursday, September 28, 2023 4:53 PM
To: kjones@naacpva.org
Subject: RE: FOIA Request: The Office of Diversity, Equity, and Inclusion

Thank you for your September 22, 2023, response to the Governor's FOIA Office.

While we had hoped that you would focus your requests, the scope still includes 31 individual queries, of documents, files, and correspondence from all previous and current employees of the Office of DOI as well as current employees of the Governor's Staff, which include:

Members of the Cabinet including the Secretariats of:

- Diversity, Opportunity, and Inclusion,
- Education
- Commonwealth, and

Members of the Governor's staff including:

- Policy
- Communications
- Office of the Governor

This broad scope chiefly arises because the terms Diversity, Opportunity, Equity and Inclusion or some of them, would appear on every document from the DEI/DOI office, if only in the signature block.

The time frame of this request stretches from the creation for this office to the present. As mentioned in our previous response dated September 18, the number of emails for this request alone amounts to approximately 50,000+ emails which as the request stands will need to be individually reviewed to determine if they satisfy each query.

A preliminary review of your request has determined the likelihood of a minimum of additional 10,000+ documents on cloud storage needing review.

The Virginia FOIA Act requires records to be described with reasonable particularity. Virginia Code Section 2.2-3704.B. A request that implicates every document held by the DOI office does not meet that requirement or even permit a reasonable cost estimate. Nor would such a search be doable without disrupting the DOI office and the Governor's FOIA Office.

Given these circumstances we request that you propose electronic search terms that actually identify discrete and manageable number of records. For the benefit of any review you may wish to undertake:

- Paragraph 5 can be searched as stated, without adding substantial costs.
- For paragraph 9, we believe even prior to review that no such documents are likely to exist, and we suggest that no hand search be undertaken.
- For paragraph 10, any documents that exist do not require an electronic search but even prior to review are likely to be exempt as correspondence and working papers of the Governor's Office. When completed, the Strategic Plan will be provided.
- For paragraphs 14 – 16, these documents would not require an electronic search, but even prior to review, we believe that they would likely be exempt as correspondence and working papers of the Governor's Office. When the DOI plan is completed, it will be made available.
- For paragraph 21, the responsive documents are not voluminous and will generate no charge.
- For paragraph 27, these documents will not require an electronic review although some may be subject to a personnel exemption.
- For paragraph 28, these documents can be provided without significant costs.
- For paragraph 29, this request is unclear as written.

We look forward to working with you to fashion practical requests that reflect your desire for information in the areas addressed by your overall request.

Denise Burch
FOIA Officer
Officer of Governor Glenn Youngkin
1111 E. Broad Street
Richmond, VA 23219
804-786-2211

From: kjones@naacpva.org <kjones@naacpva.org>
Sent: Friday, September 22, 2023 3:19 PM
To: Governor's FOIA Office <FOIA@governor.virginia.gov>
Subject: RE: FOIA Request: The Office of Diversity, Equity, and Inclusion

Dear Ms. Burch,

Thank you for your correspondence of September 14, 2023. We have revised our FOIA request to further limit or clarify the records we seek. We made changes to request nos. 3-5, 17, 23-24, and added request no. 31lf, after reviewing the revised request, you determine that the cost will exceed \$200, please provide an estimate of the cost and any required deposit as soon as possible but no later than September 28, 2023.

Sincerely,
Karen

Karen E Jones

Director of Administration

Virginia State Conference NAACP

(540) 449-4742 | kjones@naacpva.org

From: Governor's FOIA Office <FOIA@governor.virginia.gov>
Sent: Thursday, September 14, 2023 3:39 PM
To: kjones@naacpva.org
Subject: RE: FOIA Request: The Office of Diversity, Equity, and Inclusion

In further response to your FOIA request of August 31, 2023, the Governor's FOIA Office wishes to respond in the first instance to your statement: "Consistent with the Act, we are prepared to pay for the actual cost of collection and copying of the requested records, and ask that you provide an estimate of such costs should they exceed \$200 in advance of supplying the requested records."

As you have probably surmised, the costs associated with your request as now framed would greatly exceed that amount many times over. This is largely because of the breadth of your request as exemplified in part by No. 3 which implicates some 10,000 documents; No. 4, seeking all records describing the responsibilities of an executive branch office; and No. 6 which is based upon the search terms "opportunity" and "equity," which can be expected to yield a large number of disparate documents.

The search process is further complicated by the fact that review of the records of former employees practically requires a hand review because of stale knowledge with respect to context in which their documents were generated. As a result, review of emails alone would potentially involve a number of documents in the range of mid-five figures. It also should be kept in mind that review includes review for possible exemptions which might result in a low yield return on investment as with No. 3, which may largely implicate correspondence of the Governor, and No. 5 which may largely implicate working papers of the Governor.

In light of these considerations, we invite you to consider revising your requests to reduce the cost of any response. Should you desire to stand on your current requests, we will promptly calculate an advance determination of the amount of a required deposit as provided by the Virginia Code Section 2.2-3704.H., to the best of our ability.

Denise Burch
FOIA Officer
Officer of Governor Glenn Youngkin
1111 E. Broad Street

Richmond, VA 23219
804-786-2211

From: Governor's FOIA Office <FOIA@governor.virginia.gov>
Sent: Friday, September 8, 2023 2:42 PM
To: kjones@naacpva.org
Subject: RE: FOIA Request: The Office of Diversity, Equity, and Inclusion

We are in receipt of your FOIA request of August 31, 2023.

Due to staffing issues, potential volume of records, and based upon our ongoing inquiries, we find it necessary to invoke the seven day provision of Section 2.2-3704B4.

Denise Burch
FOIA Officer
Officer of Governor Glenn Youngkin
1111 E. Broad Street
Richmond, VA 23219
804-786-2211

From: kjones@naacpva.org <kjones@naacpva.org>
Sent: Thursday, August 31, 2023 10:00 AM
To: Governor's FOIA Office <FOIA@governor.virginia.gov>
Cc: 'Robert Barnette' <president@naacpva.org>; 'Katy Youker' <kyouker@lawyerscommittee.org>; Anna Kathryn Barnes <abarnes@naacpnet.org>; Anton Ashton <aashton@naacpnet.org>; jlouard@naacpnet.org; 'Mr Ghee' <jeghee@embarqmail.com>
Subject: FOIA Request: The Office of Diversity, Equity, and Inclusion

Dear FOIA Officer,

On behalf of Robert N. Barnette, Jr, President of the NAACP Virginia State Conference, we are writing to you because of our concern regarding the Governor of Virginia, the Commonwealth Director of Diversity, Equity, and Inclusion Martin Brown (hereinafter "Director Brown"), and the Office of Diversity, Equity, and Inclusion.

When you send responses, we ask that you reply to all who are copied in this email.

Sincerely,
Karen



Karen E Jones
Director of Administration
Virginia State Conference NAACP



 (804) 321-5678 (office)
[540-449-4742 \(mobile\)](tel:5404494742)

 kjones@naacpva.org

 naacpva.org

 P.O. Box 27212, Richmond, Virginia 23261

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