

**IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA**

**WILLIAM KYLE VASS,**

**Plaintiff,**

**v.**

**Civil Action No. 22-C-\_\_\_\_\_**  
**Honorable \_\_\_\_\_, Judge**

**CABELL COUNTY 911 and**  
**CABELL COUNTY COMMISSION,**

**Defendants.**

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**  
**PURSUANT TO THE WEST VIRGINIA FREEDOM OF INFORMATION ACT**

Comes now the Plaintiff, William Kyle Vass, and submits his *Complaint for Declaratory and Injunctive Relief Pursuant to the West Virginia Freedom of Information Act* against the Defendants, Cabell County 911 and the Cabell County Commission.

**INTRODUCTION**

Fundamental to a free and open democracy are the tools that allow the people to remain informed and to hold the government accountable. Laws providing open access to public records are one such essential tool.

Mr. Vass is an investigative reporter who is being unlawfully denied his right to access public records as guaranteed to him under West Virginia state law. His pursuit of public records is in an effort to provide an answer to a question of vital importance to West Virginians: Why have the state's jails been reported to be among the deadliest in the country?<sup>1</sup>

This lawsuit is the result of a months-long effort by Mr. Vass to obtain recordings of 911 calls documenting emergency situations in West Virginia regional jails. Instead of complying

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<sup>1</sup> Linda So, *West Virginia lawmakers push jail reform in response to Reuters data on inmate deaths*, Reuters, Dec. 17, 2020, <https://www.reuters.com/article/us-usa-jails-westvirginia/west-virginia-lawmakers-push-jail-reform-in-response-to-reuters-data-on-inmate-deaths-idUSKBN28R36Z>.

with his request as required by law, Defendants have unlawfully demanded that Mr. Vass present a subpoena to obtain those records.

The legislature, in enacting the West Virginia Freedom of Information Act, underscored the importance of open access, declaring 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.”<sup>2</sup>

These rights extend to all West Virginians.

### **THE PARTIES**

1. Plaintiff William Kyle Vass is a reporter for Dragline, an online non-profit media outlet which seeks to hold organizations and governments in Appalachia accountable through investigative reporting.

2. Defendant Cabell County 911 is a public body as defined by Section 29B-1-2 (4) of the West Virginia Code, and it is the possessor of the documents and information sought by the Plaintiff under the West Virginia Freedom of Information Act.

3. Defendant Cabell County Commission is the governing body of Cabell County, West Virginia. The Cabell County Commission established Cabell County 911 pursuant to authority granted to it under Section 7-1-3CC of the West Virginia Code. The Cabell County Commission is responsible for the maintenance and operations of Defendant Cabell County 911.

### **JURISDICTION AND VENUE**

4. This is an action brought pursuant to the WV FOIA, seeking disclosure of public information and records, and this Court has jurisdiction over this action pursuant to Section 29B-1-5 of the West Virginia Code.

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<sup>2</sup> W. Va. Code § 29B-1-1.

5. Venue is appropriate before this Court because the public records requested by the Plaintiff are believed to be kept by local government agencies in Cabell County, West Virginia.

### **STATEMENT OF THE FACTS**

#### *Plaintiff's written request for public records*

6. On October 19, 2021, Mr. Vass sent via email to Cabell County 911 a request for information under the WV FOIA Act.

7. The request included the following:

Any and all 911 calls that were placed to your dispatch that expressed an emergency situation happening at the regional jail in your county. I am requesting both the audio calls be made available and that incident reports be included as well (including transcriptions of call audio where available).

I am specifically requesting the above records that would have been generated from January 1, 2021 to the date this request is filed.

8. Although state law requires agencies to respond to requests for public records within five business days from the date of receipt of the request,<sup>3</sup> Mr. Vass did not receive any acknowledgment from Cabell County 911.

#### *Repeated follow up requests and blanket denial*

9. Mr. Vass, after waiting almost a month for a response, called the Cabell County 911 administrative office on November 17, 2021, to request an update.

10. Mr. Vass was informed by a Cabell County 911 employee during that call that he would be required to provide a subpoena before the office would release the audio of any phone calls.

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<sup>3</sup> W. Va. Code §29B-1-3(d).

11. The following day, Mr. Vass sent a follow up email to the employee he spoke with to confirm his understanding of the prior day's conversation, stating:

I'm writing to make sure I understand our conversation yesterday.

Per our conversation, Cabell County won't release the audio for 911 calls unless your office is served a subpoena. Is that correct?

Thanks,  
Kyle

12. Mr. Vass did not receive a response to that email.

13. On November 22, 2021, more than one month after his October 19 request, Mr. Vass sent another email, this time to Cabell County 911 Assistant Director Michael Tatum.

14. In the November 22 email, Mr. Vass stated that "despite multiple attempts to resolve this matter by email and phone," he had not received a response in writing from Cabell County 911 regarding his initial FOIA request.

15. Mr. Vass further sought to confirm Cabell County 911's position that the agency would require a subpoena in order to release audio from 911 calls:

Director Tatum,

I'm writing to inform you that despite multiple attempts to resolve this matter by email and phone, I, to this date (11/22), have not received a response in writing from your office for my Nov. 19 FOIA request. I am also writing to confirm that I was told on Thursday of last week that your office requires a subpoena in order to release audio from 911 calls.

Thanks,  
Kyle Vass

16. The same day, Mr. Vass received an email back from Assistant Director Tatum:

Mr Vass

You will need to Produce a Subpoena  
for the records that you are requesting  
Our office has advised you of this as you stated by talking to our administrative assistant.  
Under FOIA you can't receive these records. I am out of the office until Monday November 29th.

Michael G Tatum  
Assistant Director  
Cabell County 9-1-1

17. Although West Virginia Code requires that any denial under the WV FOIA must state “in writing the reasons for such denial,” and “shall afford the person requesting from the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept,” the email sent from Assistant Director Tatum did not provide any reasoning for the agency’s blanket denial of Mr. Vass’ request, nor did it provide the statutorily required notification to Mr. Vass of his right to sue in Cabell County Circuit Court to further pursue the release of public records. *See* West Virginia Code 29B-1-3.<sup>4</sup>

### **LEGAL AUTHORITY AND DISCUSSION**

18. The WV FOIA recognizes that “[p]ursuant 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.” W. Va. Code § 29B-1-1.

19. “To that end, the provisions of this article shall be liberally construed with the view of carrying out the above declaration of public policy.” *Id.*

20. “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 (a).

21. In the present case, the Plaintiff requested public records pursuant to the following definition provided in the WV FOIA: “Public record includes any writing containing information

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<sup>4</sup> *See id.* (providing that the records custodian must “[d]eny the request stating in writing the reasons for such denial,” and “shall afford the person requesting [the records] the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.”).

prepared or received by a public body, the content or context of which, judged either by content or context, relates to the conduct of the public's business." W. Va. Code § 29B-1-2 (5).<sup>5</sup>

22. The WV FOIA requires a person requesting public records to submit "[a] request to inspect or copy any public record of a public body . . . directly to the custodian of such public record." W. Va. Code § 29B-1-3 (b).

23. The Plaintiff made a direct request to the custodian of public records at Cabell County 911.

24. Further, the WV FOIA requires that "requests for information must state with reasonable specificity the information sought." W. Va. Code § 29B-1-3 (d).

25. Plaintiff complied with the reasonable specificity requirement in his WV FOIA request when he requested the "[a]ny and all 911 calls that were placed to your dispatch that expressed an emergency situation happening at the regional jail in your county," from the time period of January 1, 2021 to the date the request for public records was submitted to Cabell County 911.

26. "The custodian, upon demand for records made under this statute, shall as soon as is **practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays**: (1) Furnish copies of the requested information; (2) Advise the person making the request of the time and place at which he or she may inspect and copy the materials; or (3) Deny the request stating in writing the reasons for such denial. A denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to

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<sup>5</sup> WV FOIA provides that a "writing" includes "any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics." W. Va. Code § 29B-1-2(6).

institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.” W. Va. Code § 29B-1-3 (d). *Emphasis added.*

27. Cabell County 911 did not comply with the legal obligations established in West Virginia Code Section 29B-1-3 (d). With regard to the information requested, it did not within the maximum of five days: (1) furnish copies; (2) advise the Plaintiff when and where he could inspect and copy the records; or (3) deny the request in writing and include the requisite content and notifications.

28. West Virginia law establishes “a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under this article[.]” W. Va. Code § 29B-1-4 (a).

29. This section of the WV FOIA goes on to list a number of specific exemptions that a public body must demonstrate to overcome the presumption of public access to information. Assistant Director Tatum did not define any exemptions or other legal authority that would potentially excuse a failure to disclose the emergency calls from West Virginia regional jails to Cabell County 911 as requested by the Plaintiff.

30. West Virginia law specifically provides that, except in certain limited circumstances, “calls for emergency service to a county answering point are not confidential.” W. Va. Code § 24-6-13. *See also Orem v. Gillmore*, No. 3:18-CV-50, 2019 U.S. Dist. LEXIS 230773 (N.D.W. Va. June 17, 2019) (citing West Virginia Code Section 24-6-13 and concluding that a call to 911 reporting an overdose is a public record under a right-to-privacy analysis).

31. Defendants have not provided to Plaintiff a lawfully sufficient denial to justify withholding public records under the WV FOIA.

32. West Virginia Code provides the enforcement mechanism for the WV FOIA requirements:

(1) Any person denied the right to inspect the public record of a public body may institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(2) In any suit filed under subsection one of this section, the court has jurisdiction to enjoin the custodian or public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action [.]

(3) Except as to causes the court considers of greater importance, proceedings arising under subsection one of this section shall be assigned for hearing and trial at the earliest practicable date.

*See* W. Va. Code § 29B-1-5.

33. The Plaintiff brings the instant case against the Defendants for injunctive and/or declaratory relief under the WV FOIA to enforce the statute's requirements and requests a hearing at the earliest practicable date.

34. Plaintiff does not ask this Court to impose any criminal penalties contemplated by the WV FOIA.

### **CONCLUSION**

An open and transparent government is critical to a functioning democracy. The WV FOIA, when enacted, expressly underscored the importance of ensuring that the rights of West Virginians are protected. As stated in the Act: "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." W. Va. Code §29B-1-1. Although Cabell County 911 and the Cabell County Commission



may wish to not respond to a request under state law, what is “good for the people to know” is not a determination Defendants may make.

### **PRAYER FOR RELIEF**

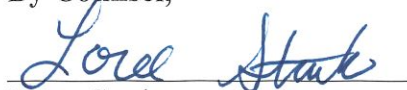
WHEREFORE, the Plaintiff, William Kyle Vass, pursuant to the WV FOIA, prays that this Court:

- (a) declare unlawful the Defendants’ refusal to completely disclose the information and records requested;
- (b) issue injunctive relief, enjoining the Defendants from withholding without justification the information and records requested, and ordering production of all information improperly withheld;
- (c) order that all information withheld from disclosure by the Defendants be disclosed;
- (d) award Plaintiff all the costs and reasonable attorney fees incurred in this action, pursuant to the requirements of West Virginia Code Section 29B-1-7;
- (e) schedule this matter for a hearing at the earliest practicable date, pursuant to West Virginia Code Section 29B-1-5 (3); and
- (f) grant such other relief as this Court may deem just and proper.

**Respectfully submitted by the Plaintiff,**

**William Kyle Vass,**

**By Counsel,**



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VERIFICATION

After being first duly sworn, I, William Kyle Vass, named in the foregoing *Verified Complaint for Declaratory and Injunctive Relief under the West Virginia Freedom of Information Act*. The foregoing is true to my knowledge, except to those matters stated to be alleged on information and belief, and as to those matters I believe them to be true.

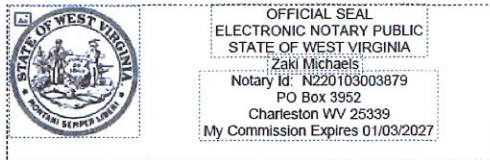
*William Kyle Vass*

Date & Time: ~~January 26, 2022 14:53:41 EST~~  
William Kyle Vass

STATE OF WEST VIRGINIA,

COUNTY OF     Kanawha    , to-wit:

Taken, subscribed and sworn to before me, the undersigned Notary Public, this date,  
January 26, 2022 \_\_\_\_\_.



  
\_\_\_\_\_  
NOTARY PUBLIC

This remote online notarization involved the use of audio/visual communication technology

My commission expires: 1/3/2027