



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

West Virginia

P O Box 3952

Charleston WV 25339-3952

(304) 345-9246

www.acluww.org

January 2, 2020

Dennis Xander, President
Board of Directors of Upshur County Public Library
1150 Route 20 South Rd.
Buckhannon, WV 26201
upshur.info@clark.lib.wv.us
sent via email and first-class mail

Mr. Xander,

Pursuant to the West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1 *et seq.* (FOIA), the American Civil Liberties Union of West Virginia (ACLU-WV) requests documents and communications regarding the Upshur County Public Library's removal or reconsideration of the children's book *Prince & Knight*.

This request includes but is not limited to all records or communications preserved in electronic or written form, *including but not limited to* correspondence, data, directives, documents, videotapes, audio tapes, e-mail, **text messages**, faxes, files, guidance, guidelines, evaluations, instructions, **messages sent on social media platforms**, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, or studies. Please note that this request also includes a request for any communications sent using personal phones, email accounts, and social media accounts.¹ The date range for these requests, unless otherwise noted, is from January 1, 2018 to the present.

1. Library materials selection policy or policies.
2. Correspondence and materials related to the book *Prince & Knight*, including but not limited to:
 - a. Any "request for reconsideration" or similar request from library patrons or community members or other individuals relating to the book *Prince & Knight*.
 - b. Any response, written or emailed or otherwise, from the library director or library staff member to a "request for consideration" or similar request relating to the book *Prince & Knight*.
 - c. Any appeal or correspondence to the Library Board of Directors relating to a "request for consideration" or similar request relating to the book *Prince & Knight*.
 - d. Any other correspondence or documents relating to the book *Prince & Knight*.
3. A list of books removed from shelves at the Upshur County Public Library from January 1, 2017 to present.
4. The location of the books referenced in Request No. 3.

¹ Official records in the personal control of a government official are government records and subject to sunshine laws. *See, e.g., Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016) ("[A]n agency always acts through its employees and officials. If one of them possesses what would otherwise be agency records, the records do not lose their agency character just because the official who possesses them takes them out the door or because he is the head of the agency.")

5. Any additional correspondence and materials related to any books referenced above in Request No. 3.
6. Minutes, correspondence, and any other documents relating to the most recent meeting of the Upshur County Library Board of Directors.
7. Agenda, correspondence, and any other documents relating to the next meeting of the Upshur County Library Board of Directors.

If you are not technically the custodian of the documents described in this request, I ask that you forward the request to the custodian(s) or advise me of the identity of the custodian(s) so that I can make the request directly to that person or those persons.

Please note that W. Va. Code § 29B-1-3 requires agencies to respond to requests for public records within **five business days**. If you anticipate that it will take longer than five business days, or have questions about the scope of this request, please call me at (304)-345-9246.

Additionally, while W. Va. Code § 29B-1-3(5) permits public agencies to assess fees associated with the reproduction of public records, as a not-for-profit advocacy organization we request a waiver of any fees associated with the furnishing of these documents. To limit costs, electronic production of documents would be preferable. If you do intend to assess fees, however, please contact me for authorization of any fees in excess of \$100.

West Virginia's Freedom of Information Act is "liberally construed with the view of carrying out" a policy of disclosure, while exemptions are to be narrowly construed. W. Va. Code §29B-1-1. Any party claiming that an exemption applies bears the burden of proving its applicability. *See Daily Gazette v. W. Va. Dev. Office*, 482 S.E.2d 180, 187 (W. Va. 1996). Documents regarding policies of public agencies after the policies have been formulated are not subject to the "internal memoranda or letters" exemption to the WV-FOIA provisions. *See id.* at 192. Finally, for any undisclosed or redacted records, we request a *Vaughn* index.

Thank you in advance for your prompt response. Please furnish all records to:

Loree Stark
ACLU of WV Foundation
P.O. Box 3952
Charleston, WV 25339-3952
lstark@acluwv.org

If you have any questions or concerns, I can be reached at lstark@acluwv.org.

Regards,



Loree Stark
Legal Director, ACLU-WV

