



(304) 345-9246
www.acluwb.org

P.O. Box 3952
Charleston WV 25339-3952

September 15, 2017

Via Facsimile & Certified U.S. Mail

Sheriff Miles Slack
P.O. Box 429
Clay, West Virginia 25043
(304) 587-8366

Re: FOIA Request

Sheriff Slack:

This week, I became aware of an incident involving Robert Belt, who is one of your deputies and a part-time bus driver for Clay County Schools. It is being reported that Mr. Belt used bigoted, homophobic language to students, including threats of hell, while driving a school bus. These reports are incredibly troubling and must be taken seriously. LGBT students are already disproportionately bullied and harassed in school, without adults in positions of power using homophobic slurs and telling students they will be damned for all eternity. Nine out of ten LGBT students report being bullied or harassed in the last year; over one-third of LGBT students are physically assaulted at school; and two-thirds of LGBT students report being sexually harassed in the last year.¹

As I am sure you are aware, your office has a responsibility under the United States Constitution, West Virginia Constitution, and federal and state civil rights laws to protect all of the people in Clay County, regardless of their sexual orientation, gender identity, race, national origin, religion, or gender.

While recognizing that certain records regarding open investigations may be exempt to disclosure under the West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1 *et seq.* (“WV-FOIA”), I believe you are in possession of certain disclosable records related to this troubling report and the your office’s policies and practices regarding your deputies’ responsibilities when they are in uniform.

¹ *Anti-Gay Bullying, Stomp Out Bullying*, <http://www.stompoutbullying.org/index.php/information-and-resources/about-bullying-and-cyberbullying/anti-gay-bullying/>.

. Pursuant to WV-FOIA, the ACLU-WV requests the following materials and any related records²:

1. Any and all documents and communications related to *closed* investigations regarding Deputy Robert Belt.³
2. Any and all documents and communications related to complaints filed against Deputy Robert Belt, where the complaints are no longer being investigated.
3. Any and all documents and communications related to officers wearing their uniforms while off-duty.
4. Any and all documents and communications related to policies regarding how officers should comport themselves while in uniform.
5. Any and all documents and communications related to policies and practices regarding bullying, harassment, diversity, and discrimination.
6. Any and all closed investigations regarding alleged misconduct or complaints related to sexual orientation or gender identity.
7. Any and all communications in your possession (including emails and text messages), which are not a part of any ongoing investigations, regarding the incident involving Mr. Belt on a Clay County school bus.

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.

² 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, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, or studies.

³ While open investigations into misconduct by public employees are exempt from WV-FOIA, records of closed investigations must be disclosed. *See Charleston Gazette v. Smithers*, 752 S.E.2d 603, 626 (W. Va. 2013).

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 acceptable. If you do intend to assess fees, however, please contact me for authorization of any fees in excess of \$100.

The WV-FOIA “shall be 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:

Jamie Lynn Crofts
ACLU of WV Foundation
P.O. Box 3952
Charleston, WV 25339-3952

If you have any questions or concerns, I can be reached at (304) 345-9246, ext. 102, or jcrofts@acluwv.org.

Regards,



Jamie Lynn Crofts
Legal Director, ACLU-WV