

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

PEOPLE FOR THE ETHICAL)
TREATMENT OF ANIMALS, INC.,)
)
Petitioner,)
)
v.) No. CL14175
)
CITY OF NORFOLK.)
)
Respondent.)
_____)

CONSENT DECREE

THIS ACTION came before the Court on the motion of Petitioner People for the Ethical Treatment of Animals, Inc. ("PETA") and respondent City of Norfolk (the "City") for the entry of this Consent Decree resolving all claims by Petitioner's action; and

IT APPEARING TO THE COURT THAT:

1. On January 9, 2014 PETA filed the present action against the City, alleging that the City had violated the Virginia Freedom of Information Act (FOIA), Va. Code § 2.2-3700 *et seq.* and the Virginia Public Records Act (PRA), Va. Code § 42.1-76, *et seq.*, by failing to preserve and/or make available for inspection public records in the form of text messages.

2. After this action was filed, the City promulgated a new policy governing the use of mobile devices by City officials (the "Policy"), which became effective on June 1, 2014.

3. The Policy states, in relevant part:

Any mobile device that is used to conduct city business may be subject to the Freedom of Information Act (FOIA) and could also be subject to judicial discovery (e.g. Rule 26), HIPAA regulations, Criminal Justice Information Services (CJIS) Security Policy, or any other applicable policy or regulation.

Employees who use mobile devices for City of Norfolk official business have no expectation of privacy or confidentiality in any information or communications created or stored on the City's electronic data resources. Unless exempted by

law, regulation, or protected as attorney-client privileged communications[,] all data and communications stored, transmitted, or printed, is subject to review and audit at any time.

Text messages, instant messages (IM), or personal identification number (PIN) messages cannot be routinely backed up or logged. The use of such messages for the conduct of City business is discouraged; if an employee receives or sends any text message related to their conduct of City business, all such received or sent text messages shall be forwarded from the employee to their City email account, where they can be preserved in accordance with the City's public records retention schedule.

4. The City acknowledges that text messages (defined herein as any writing including any representation of words, letters, symbols, numbers, or figures, that is transmitted to or from a wireless electronic communications device over a phone network) sent or received in the conduct of public business are "public records" as that term is defined in both FOIA and the PRA.

5. The City does not agree that the alleged text messages which are the subject of this action ever were sent, received or existed; the City does not agree that it violated FOIA or the PRA in the particulars of this case. Notwithstanding this disagreement, the City has adopted and agrees to maintain the Policy.

6. PETA does not agree that "[t]ext messages, instant messages (IM), or personal identification number (PIN) messages cannot be routinely backed up or logged," as set forth in the Policy. Notwithstanding this disagreement, PETA and the City agree that the Policy, if faithfully and strictly implemented, meets or exceeds the requirements of FOIA and the PRA as they apply to text messages.

7. The parties agree that, by entering into this agreement, the City does not admit any liability in this matter.

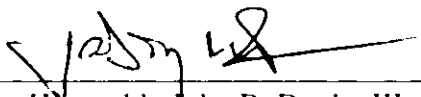
THEREFORE, IT IS HEREBY ORDERED THAT:

1. Henceforth, the City shall maintain a policy under which text messages sent or received in the course of public business are treated as "public records" under FOIA and the PRA. The parties agree that the current Policy quoted above meets or exceeds this requirement.


2. Within thirty (30) days of the entry of this Order, the City will remit to PETA's attorneys the sum of \$18,000 by check payable to the American Civil Liberties Union Foundation of Virginia, and mailed to Rebecca K. Glenberg, ACLU of Virginia, 701 E. Franklin St., Suite 1412, Richmond, Virginia 23219, in full satisfaction of any claims for attorney's fees and expenses related to this action.

3. This case is hereby DISMISSED with prejudice.

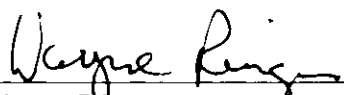
Dated: January 8, 2015



The Honorable John R. Doyle, III

WE ASK FOR THIS:


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