IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

DIANA ASTIZ, Plaintiff, v. STATE OF WEST VIRGINIA OFFICE OF THE GOVERNOR, Defendant.	Civil Action No. 23-P-218 Judge: Hon. Jennifer F. Bailey

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HER MOTION FOR SUMMARY JUDGMENT

Plaintiff Diana Astiz issued a West Virginia Freedom of Information Act request to the office of Governor Jim Justice for the most basic of public records: records of official meetings scheduled for the governor and his most senior staff. The Governor's Office refused to produce a single record in clear violation of West Virginia law. W. Va. Code § 29B-1-1 *et seq*.

The denial to produce these public records appears calculated to attempt to benefit the Governor politically. Governor Justice declared his candidacy for U.S. Senate in April, and his actions as Governor will no doubt be of keen interest to voters as they decide who they will support in that race. But, the last time Governor Justice produced records of official scheduled meetings—in 2019—they showed that he "almost never meets with his Cabinet, is rarely at the capital and was largely missing at one of the most critical points of [the] year's legislative session."[1] The

[1] Anthony Izaguirre, *Schedules show West Virginia governor largely absent in job*, AP NEWS (May 10, 2019), https://apnews.com/article/ap-top-news-us-news-north-america-west-virginia-charleston-f080da8d7189476e91062c69483166a1.

Governor may understandably desire to avoid another round of similar criticism, but he is the chief executive of the State and has the duty to ensure that its laws are faithfully executed.

West Virginia law does not allow the Governor's Office to evade public scrutiny in this way: "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. FOIA requires the production of public records of public bodies, such as Plaintiff's request for official scheduled meetings of the Governor and senior staff, subject only to certain delineated exemptions, none of which apply to Plaintiff's request. *Id.* § 29B-1-3(a). Summary judgment is appropriate because the undisputed facts demonstrate that the Governor's Office's refusal to produce the requested records is a clear violation of FOIA. *Id.* § 29B-1-3(a).

FACTUAL BACKGROUND

Plaintiff Diana Astiz issued a FOIA request to the Office of the Governor seeking public records regarding all "scheduled official meetings" involving Governor Jim Justice, the Governor's Chief of Staff Brian Abraham, the Governor's Deputy Chief of Staff Ann Urling, and the Governor's General Counsel Berkeley Bentley, from January 2017 to the present. Ex. A to the Aff. of Marilyn Robb, filed herewith. Plaintiff's FOIA Request asked that if any responsive records contain "purely personal meetings scheduled, private documents, or sensitive information," the Governor's Office should "provide records that are redacted as needed, and state the specific legal and factual grounds for withholding any portions of the records." *Id.*

The Governor's Office instead denied the Request in full. Robb Aff. Ex. B. The Governor's Office stated that it had located responsive documents in its custody but denied the request "to the extent it seeks records exempt from disclosure under West Virginia Code § 29B-1-4(a)(2) and (8)."

Id. It stated that some records responsive to Plaintiff's FOIA request "are only in draft format, contain appointments that may or may not occur, are revised daily, are never corrected, and are not an accurate log of such meetings." *Id.* It also stated that any calendars or notes responsive to Plaintiff's FOIA request "are maintained exclusively for the personal convenience of those staff members to coordinate both personal and business appointments and are neither under the Office of the Governor's control nor integrated into the Office of the Governor's files." *Id.* The Governor's Office therefore did not produce a single record in response to Plaintiff's FOIA Request.

On May 22, 2023, Plaintiff filed this expedited action for declaratory and injunctive relief under FOIA. Plaintiff served the Governor's Office on June 1. On July 14, the Governor's Office moved to dismiss. Plaintiff files this motion for summary judgment simultaneously with her opposition to the motion to dismiss because there is no reason for further delay: the Governor's Office cannot possibly show that the complete denial of Plaintiff's Request complied with FOIA. *See* W. Va. R. Civ. P. 56(a) (allowing a summary judgment motion by a claimant any time after 30 days from the date process is served).

LEGAL STANDARD

"Summary judgment is the preferred method of resolving cases brought under FOIA." *Farley v. Worley*, 215 W. Va. 412, 418, 599 S.E.2d 835, 841 (2004) (quoting *Evans v. Off. of Pers. Mgmt*., 276 F. Supp. 2d 34, 37 (D.D.C. 2003)). The Court must consider the motion "through the prism of the substantive evidentiary burden." *Williams v. Precision Coil, Inc*., 194 W. Va. 52, 62, 459 S.E.2d 329, 339 (1995) (quoting *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 254 (1986)). Even at summary judgment, the public body "has the burden to show that it acted in accordance with the statute," because summary judgment is "viewed through the evidentiary burden placed

upon the public body to justify the withholding of materials." *Farley*, 215 W. Va. at 418, 599 S.E.2d at 841 (quoting *Valencia–Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999)); *see also* W. Va. Code § 29B-1-5(2) (providing that "the burden is on the public body to sustain its action" in response to a FOIA lawsuit). Plaintiff's burden in moving for summary judgment is therefore "only [to] point to the absence of evidence supporting" the Governor's Office's withholding of documents. *Powderidge Unit Owners Ass'n v. Highland Props., Ltd.*, 196 W. Va. 692, 699 474 S.E.2d 872, 879 (1996) (alteration in original) (quoting *Latimer v. SmithKline & French Labs.*, 919 F.2d 301, 303 (5th Cir. 1990)). The Court must then grant the motion unless the Governor's Office "come[s] forward with evidence which will be sufficient to enable it to survive a motion for directed verdict at trial." *Id.* at 699, 474 S.E.2d at 879.

ARGUMENT

I. The Governor's Office's denial of Plaintiff's Request violates FOIA.

A. The Governor's Office is a public body.

The records Plaintiff seeks are "public record[s] of a public body" and are therefore subject to FOIA. W. Va. Code § 29B-1-3(a). FOIA defines "public body" as "*every* state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission," along with "*any other body* which is created by state or local authority or which is primarily funded by the state or local authority." *Id.* § 29B-1-2(4) (emphasis added). The Office of the Governor indisputably qualifies as a "public body" under this all-encompassing definition: it sits at the head of the executive department and is entirely funded by the state.

In its motion to dismiss, the Governor's Office asserts without elaboration that "principles of separation of powers preclude it from being a 'public body' subject to" FOIA. Def.'s Mot. to Dismiss 4 n. 1. This is nonsense. The Supreme Court of Appeals has held that FOIA applies to Supreme Court Justices; there is no basis for including them but excluding the Governor. *See*

Assoc. Press v. Canterbury, 224 W. Va. 708, 715, 688 S.E.2d 317, 324 (2009). Far from violating the separation of powers, FOIA's broad application reflects "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." *Id.* at 714, 688 S.E.2d at 323 (quoting W. Va. Code § 29B-1-1). As the Supreme Court of Appeals has explained again and again, FOIA thus reflects a core feature of West Virginia public policy, "favor[ing] the direct access of individual members of the public to information regarding the public's business." *Affiliated Constr. Trades Found. v. Reg'l Jail & Corr. Facility Auth.*, 200 W. Va. 621, 625, 490 S.E.2d 708, 712 (1997). That public policy is entirely consistent with the West Virginia Constitution, which emphasizes that "[a]ll power is vested in, and consequently derived from, the people," and that "[m]agistrates are their trustees and servants, and at all times amenable to them." W. Va. Const. art. III, § 3-2. The Governor's Office is therefore a public body of the State of West Virginia.

B. The requested records are public records.

FOIA also contains an exceptionally broad definition of "public record," providing that the term "includes any writing containing information 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). The Supreme Court has held that the use of "includes" makes this "an illustrative definition, and not an exclusive definition." *Shepherdstown Observer, Inc. v. Maghan,* 226 W. Va. 353, 358, 700 S.E.2d 805, 810 (2010). FOIA's scope is therefore not limited by the express terms of the (already broad) "public records" definition, but rather extends to *all* records whose disclosure would further the "spirit, purpose and object of the law": providing "'full and complete information regarding the affairs of government and the

official acts of those who represent them as public officials and employees.'" *Id.* at 357–58, 700 S.E.2d at 809–10 (quoting W. Va. Code § 29B-1-1).

The records Plaintiff seeks fall directly within FOIA's definition of public records. Whether they exist in printed or electronic form, they are undeniably "writings," a term that "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) (emphasis added), and which the Supreme Court has held includes electronic documents like emails, Syl. pt. 2, *Canterbury*, 224 W. Va. at 715, 688 S.E.2d at 324. And there can be no dispute that they were "prepared or received by a public body"—the Governor's Office or the individual state officers who work there.

C. The requested public records related to the conduct of the public's business.

The final question is whether the records' "content or context . . . , judged either by content or context, relates to the conduct of the public's business." W. Va. Code § 29B-1-2(5). The Supreme Court of Appeals has explained that "the public's business" means "the business of the government" and covers "matters within the purview of the agency's duties, functions and jurisdiction." *Canterbury*, 224 W. Va. at 716, 688 S.E.2d at 325. Thus, a writing is a public record if it "relates to the conduct of the public's business, *i.e.*, the official duties, responsibilities or obligations of a particular public body." *Id.* Any records that fall within the scope of Plaintiff's request for records of scheduled official meetings will necessarily be "public records" under this definition. By virtue of being official meetings, such meetings must have concerned "matters within the purview of the [Governor's] duties, functions and jurisdiction" and therefore relate to the "business of the government." *Id.*

Even aside from the Supreme Court of Appeals' gloss in *Canterbury*, the plain meaning of "the public's business" should be dispositive. Absent a statutory definition, the Court must apply

the term's "common, ordinary and accepted meaning in the connection in which [it is] used." *Shepherdstown Observer, Inc.,* 226 W. Va. at 357, 700 S.E.2d at 809 (quoting Syl. pt. 1, *Miners in General Grp. v. Hix*, 123 W. Va. 637, 17 S.E.2d 810 (1941), *overruled on other grounds*, *Lee-Norse Co. v. Rutledge*, 170 W. Va. 162, 291 S.E.2d 477 (1982)). And as a matter of "common, ordinary and accepted meaning," surely official meetings of the Governor and his staff involve "the public's business."

FOIA's purpose resolves any remaining doubt. In construing an undefined statutory term, the Court must "ascribe a meaning that accords with the spirit, purpose and object of the law in issue." *Shepherdstown Observer,* 226 W. Va. at 357, 700 S.E.2d at 809. And the spirit, purpose, and object of FOIA are to guarantee the people of West Virginia "full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees," and to prevent public servants from deciding "what is good for the people to know and what is not good for them to know." *Id.* at 358, 700 S.E.2d at 810 (quoting W. Va. Code § 29B-1-1 (1977)). Courts are expressly obligated to "liberally construe" FOIA's disclosure provisions to ensure that this purpose is carried out. *Id.* A holding that the records of the Governor's and his staff's official meetings are not subject to FOIA at all would be impossible to square with that legislative purpose.

Moreover, the "public records" definition is not limited to records whose content relates to public business—it also includes records whose context makes them relevant to the public business. This is intentionally broad language. Under the context prong, whether the document is a "public record" turns on the interest of the general public in the" documents sought. *St. Mary's Med. Ctr., Inc. v. Steel of W. Va., Inc*., 240 W. Va. 238, 245, 809 S.E.2d 708, 715 (2018). The Legislature adopted the context prong in 2015 and 2016, in direct response to the Supreme Court

of Appeals' decision in *Canterbury* holding that personal email messages between the Chief Justice of the Supreme Court and the CEO of a litigant with a case before that Court were not disclosable public records, because the *content* of the messages did not itself involve public business. 224 W. Va. at 726, 688 S.E.2d at 335. *Canterbury* explained that "[i]f FOIA's definition of a public record is to include an examination of the record's context by virtue of the public's interest in the record, the Legislature must add such language to that definition." *Id.* at 725, 688 S.E.2d at 335. The Legislature's adoption of that very amendment clearly sought to reverse the result in *Canterbury*. As amended, FOIA now covers not only records whose content relates to public business, but also records whose content concerns private matters, if the records' context creates a legitimate public interest in the disclosure of the record. *See* W. Va. Code § 29B-1-2(5)*; St. Mary's Med. Ctr.*, 240 W. Va. at 245, 809 S.E.2d at 715.

Even if there were some question as to the *content* of the requested records, the *context* surrounding those records is dispositive. The public has a clear and obvious interest in who the Governor and his senior staff hold official meetings with, and when. That is a central aspect of the "affairs of government and the official acts of those who represent" the West Virginia people, about which FOIA entitles the public to "full and complete information." W. Va. Code § 29B-1-1. No surprise, then, that when the Governor last released his official calendar, in 2019, it prompted significant press coverage and controversy, just as FOIA is intended to allow.[2] Here, where the

[2] *See, e.g.,* Anthony Izaguirre, *Schedules show West Virginia governor largely absent in job*, AP NEWS (May 10, 2019), https://apnews.com/article/f080da8d7189476e91062c69483166a1; Anthony Izaguirre, *Schedules reveal West Virginia governor largely absent from work*, AP NEWS (May 17, 2019), https://leads.ap.org/best-of-the-states/west-virginia-governor-often-absent-from-job. The release of Governor Justice's calendar in 2019 preceded debate about whether Governor Justice is fit for public office—clearly a significant matter of public concern.

public has a legitimate interest in the official scheduled meetings of the governor and his senior staff, it is not relevant whether the records are used for the personal convenience of the relevant agency officials.

Records responsive to Plaintiff's request therefore constitute "public records" under FOIA's plain text and the precedent construing it. In arguing otherwise, the Governor's Office has relied on federal precedent applying a different test. *See* Robb Aff. Ex. B (Denial Letter citing *Bureau of Nat'l Affairs, Inc. v. U.S. Dep't of Justice*, 742 F.2d 1484 (D.C. Cir. 1984)); Def.'s Mot. to Dismiss 5–8. But there is no support in West Virginia law for applying that federal test.

In sharp contrast to West Virginia FOIA's broad statutory definition of "public records," federal FOIA requires the disclosure of "agency records" but does not define that term. *See* 5 U.S.C. § 552(a)(3); *Bureau of Nat'l Affairs*, 742 F.2d at 1488. Federal courts therefore use a "totality of the circumstances" approach to deciding whether a given record is disclosable as an "agency record." *Bureau of Nat'l Affairs, Inc.*, 742 F.2d at 1492–93. The federal test focuses largely on the agency's *use* of the document. *See, e.g.*, *Consumer Fed'n of Am. v. Dep't of Ag.*, 455 F.3d 283, 288 (D.C. Cir. 2006). That consideration is entirely absent from West Virginia FOIA's definition, which turns on whether the "content *or* context" of the document "*relates to* the conduct of the public business," W. Va. Code § 29B-1-2(5) (emphasis added), not on whether an employee "used the document to conduct agency business," *Consumer Fed'n*, 455 F.3d at 291. As the Maryland Court of Appeals explained in exactly this context, federal "cases deciding

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See, e.g., Craig Blair, *Jim Justice is neither Democrat nor Republican – He's a narcissistic opportunist*, W. VA. RECORD (Jun. 11, 2019, https://wvrecord.com/stories/512621456-jim-justice-is-neither-democrat-nor-republican-he-s-a-narcissistic-opportunist); Editorial, *Justice could make it to Senate, but should he?,* CHARLESTON GAZETTE-MAIL (Apr. 29, 2023), https://www.wvgazettemail.com/opinion/editorial/gazette-mail-editorial-justice-could-make-it-to-senate-but-should-he/article_6715034c-d90c-5f72-96ea-81ba0b25e42f.html.

whether governmental documents are 'agency records' within the meaning of the federal statute are not very pertinent in determining whether a governmental document is disclosable under" state statutes that contain broader "public records" definitions. *Off. of Gov. v. Wash. Post Co.*, 360 Md. 520, 555, 725 A.2d 249, 268 (2000).

The records Plaintiff requests are therefore public records under FOIA. Unless an exemption applies, Defendant must disclose them.

II. The requested records are not exempt from disclosure.

No exemption shields the requested records from FOIA's disclosure requirements. "There is a presumption of public accessibility to all public records, subject *only* to" the Act's express exemptions. W.Va. Code § 29B-1-4(a) (emphasis added). Those exemptions "are to be strictly construed." Syl. pt. 4, *Hechler v. Casey*, 175 W. Va. 434, 442, 333 S.E.2d 799, 808 (1985). None covers the records Plaintiff seeks.

The Governor's Office Denial Letter first argued that the requested records are exempt from disclosure because they exist "only in draft format, contain appointments that may or may not occur, are revised daily, are never corrected, and are not an accurate log of such meetings." Ex. B (citing *Courier-Journal v. Jones*, 895 S.W.2d 6 (Ky. App. 1995)). But the Kentucky law at issue in *Courier-Journal* contained an express exemption for "preliminary drafts" and "notes." Ky. St. § 61.878(i). The Kentucky Court of Appeals applied that express exemption in *Courier-Journal* when it held that draft appointment ledgers were not subject to disclosure under Kentucky law. 895 S.W.2d at 10. In contrast, there is no exemption in West Virginia FOIA for draft or incomplete documents. *See* W. Va. Code § 29B-1-4. So *Courier-Journal*'s conclusion that daily appointment ledgers were exempt from disclosure as draft documents does nothing to suggest that the requested records are exempt from disclosure under West Virginia FOIA, which has no such exemption.

The Governor's Office also cited W. Va. Code § 29B-1-4(a)(2) and (8), but neither exemption applies. Robb Aff. Ex. B. Section 29B-1-4(a)(2) exempts "[i]nformation of a personal nature such as that kept in a personal, medical, or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance." W. Va. Code § 29B-1-4(a)(2). West Virginia courts apply a five-factor test to assess whether information is covered by this exemption:

> 1. Whether disclosure would result in a substantial invasion of privacy and, if so, how serious.
>
> 2. The extent or value of the public interest, and the purpose or object of the individuals seeking disclosure.
>
> 3. Whether the information is available from other sources.
>
> 4. Whether the information was given with an expectation of confidentiality.
>
> 5. Whether it is possible to mould relief so as to limit the invasion of individual privacy.

Syl. pt. 5, *Hurlbert v. Matkovich*, 233 W. Va. 583, 594, 760 S.E.2d 152, 163 (2014) (quoting Syl. pt. 2, *Child Protection Group v. Cline*, 177 W. Va. 29, 30, 350 S.E.2d 541, 542 (1986)). None of those factors supports application of the exemption to the requested records. Information about the official meetings held by the Governor and his senior staff does not implicate personal information or invade privacy *at all*. The public has an obvious interest in those official meetings, and there is no other source of that information. And neither the Governor and his staff nor the people they met with can have had any reasonable expectation of confidentiality in their official meetings. There is thus no invasion of privacy implicated by the request, and no need to mold relief to avoid it. In any event, the Governor's Office now admits that personal information exemption applies, at most, to "certain contents of responsive material," Def.'s Mot. to Dismiss 4 n. 1, so it cannot possibly

justify the complete failure to produce responsive documents. *See* Syl. pt. 5, *Farley*, 215 W. Va. at 421, 599 S.E.2d at 844 (explaining that, if portions of a document are exempt from disclosure, agency must redact the exempted information and disclose the non-exempt information).

The second exemption the Governor's Office cited, W. Va. Code § 29B-1-4(a)(8), is equally inapplicable. Subsection (8) is known as the internal memoranda exemption, and it exempts from disclosure "written internal government communications consisting of advice, opinions and recommendations which reflect a public body's deliberative, decision-making process." Syl. pt. 3, *Highland Min. Co. v. W. Va. Univ. Sch. of Med*., 235 W. Va. 370, 382, 774 S.E.2d 36, 48 (2015) (quoting Syl. pt. 4, *Daily Gazette Co. v. W.Va. Dev. Off.*, 198 W.Va. 563, 575, 482 S.E.2d 180, 192 (1996)). For the internal memoranda exemption to apply, "the documents must be both predecisional and deliberative" in "the context in which the materials are used." *Id.* at 383 (internal quotations omitted). Predecisional materials are prepared to assist a decisionmaker "in arriving at his or her decision," before the decision is made. Syl. pt. 5, *Highland Min. Co.*, 235 W. Va. 370, 774 S.E.2d 36. Deliberative materials must "reveal[] the manner in which the public body evaluates possible alternatives relevant to the decisional process." *Id.*

The Governor's Office has no evidence that *any* records responsive to Plaintiff's request meet this test, much less that *all* of them do as would be needed to justify the Governor's Office's complete failure to produce responsive documents. As federal courts have explained in construing the analogous exemption under federal FOIA, "details about where a meeting was held, who scheduled a meeting, and who attended a meeting" are unlikely to fall within the privilege because they "reveal, at most, insignificant or readily observable details about an agency's decisionmaking process," and revealing the "general topic of a meeting . . . would expose no suggestions, no recommendations, no proposals, and no other aspect of the agency communications." *Property of*

the People, Inc. v. OMB, 330 F. Supp. 3d 373, 381 (D.D.C. 2018); *see also Am. Oversight v. USPS*, No. CV 20-2580 (RC), 2021 WL 4355401, at *8 (D.D.C. Sept. 23, 2021) (rejecting application of deliberative process privilege to calendar entries absent "identification of a specific deliberative process at issue, how these calendar entries contributed to said deliberative process, or any explanation of who issued these calendar entries and their position in the chain of command"). Plaintiff is therefore entitled to summary judgment that the Governor's Office's complete failure to produce responsive documents violated FOIA.

To the extent that the Governor's Office responds to this motion by coming forward with new, not previously disclosed evidence that particular documents are indeed predecisional and deliberative, the Court must assess that evidence on a document-by-document basis. To avoid summary judgment, the Governor's Office must "come forward with evidence which will be sufficient to enable it to survive a motion for directed verdict at trial." *Powderidge Unit Owners Ass'n*, 196 W. Va. at 699, 474 S.E.2d at 879. That requires "*evidence* that the information at issue would be subject to this exemption." *Charleston Gazette v. Smithers*, 232 W. Va. 449, 473, 752 S.E.2d 603, 627 (2013) (emphasis added). In particular, the Governor's Office must "set forth its specific claims of deliberative process privilege in a *Vaughn* index," *Daily Gazette Co.*, 198 W. Va. at 573, 482 S.E.2d at 190—a document-by-document index providing a "relatively detailed justification as to why each document is exempt, specifically identifying reasons why [the exemption] is relevant and correlating the claimed exemption with the particular part of [each] document to which the claimed exemption applies." *Id.* Syl. pt. 3. "The public body must also submit an affidavit, indicating why disclosure of the documents would be harmful and why such documents should be exempt." *Id.* And if documents are only partially privileged, the Governor's Office must redact the exempted information and disclose the non-exempt information. *See* Syl.

pt. 5, *Farley*, 215 W. Va. at 421, 599 S.E.2d at 844 (explaining that "an entire document is not exempt merely because an isolated portion need not be disclosed") (quoting *Vaughn v. Rosen*, 484 F.2d 820, 825 (D.C. Cir. 1973)). An agency "may not sweep a document under a general allegation of exemption, even if that general allegation is correct with regard to part of the information." *Id.* at 421.

Plaintiff is therefore entitled to summary judgment that the Governor's Office's complete refusal to disclose records responsive to Plaintiff's request violated FOIA. Any narrower claims of exemption that the Governor may make in response to this motion must be addressed narrowly, with the burden on the Governor's Office to provide evidence substantiating its claims. To date, it has provided none.

III. Plaintiff is entitled to her reasonable attorneys' fees and costs for bringing this action.

Under W. Va. Code § 29B-1-7, a person who is unlawfully denied access to public records and who successfully brings a suit filed pursuant to W. Va. Code § 29B-1-5 *shall* be entitled to recover his or her attorney fees and court costs from the public body that denied him or her access to the records. The Plaintiff is "entitled to recover . . . her attorney fees and court costs" for bringing this action because the Governor's Office improperly withheld records in violation of FOIA. W. Va. Code § 29B-1-7. In addition to entering a declaratory judgment and an injunction requiring the Governor's Office to produce responsive records, the Court should therefore order that that the Governor's Office must pay Plaintiff's fees and costs.

CONCLUSION

For the forgoing reasons, the Court should grant Plaintiff's Motion for Summary Judgment, enter a declaratory judgment that the Governor's Office must disclose the requested records, enter

an injunction ordering the Governor's Office to do so, and award Plaintiff her attorneys' fees and costs for bringing this action.

July 26, 2023

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