



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

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July 6, 2026

Complainant: Donald Garrett
Association: Gates of McLean Condominium Unit Owners' Association
File Number: 2025-02868

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

The Complainant, Donald Garrett ("Complainant"), submitted a complaint to Gates of McLean Condominium Unit Owners' Association ("Association") dated February 18, 2025. The Association provided a response to Complainant's complaint dated April 22, 2025, with a revised copy provided to the Complainant on April 29, 2025. The Complainant then submitted a Notice of Final Adverse Decision ("NFAD") to the Office of the Common Interest Community Ombudsman ("Office") dated May 15, 2025, and the NFAD was received by our Office on May 29, 2025.

Authority

In accordance with its regulations, this Office, as designee of the Agency Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18 Va. Admin. Code ("VAC") § 48-70-120) The process of making such a determination begins with receipt of a NFAD that has been submitted to this office in accordance with §54.1-2354.4 of the Code of Virginia of 1950, as amended ("Va. Code") and the Common Interest Community Ombudsman regulations ("Regulations"). An NFAD results from an association complaint submitted through an association complaint procedure. The association complaint must be submitted in accordance with the applicable association complaint procedure and as specifically set forth in the Regulations, "shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations."

Under the Regulations, "applicable laws and regulations" pertain solely to common interest community laws and regulations. Any complaint that does not concern common interest community laws or regulations is not appropriate for submission through the association complaint procedure, and we cannot provide a determination on such a complaint. Common interest community law is limited to the Virginia Condominium Act ("VCA"), the Property Owners' Association Act ("POAA"), and the Virginia Real Estate Cooperative Act ("VRECA").

The only documents that will be considered when reviewing an NFAD, in accordance with Regulation 18 VAC 48-70-90, are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision. Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered. Further, this Determination is final and not subject to further review or appeal pursuant to Va. Code § 54.1-2354.4(C).

If within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with Va. Code § 54.1-2351 or § 54.1-2352 as deemed appropriate by the Board.

Determination

The Complainant presents a single allegation against the Association. As described more fully below, the Complainant alleges that he requested records from the Association, in accordance with the VCA, specifically Va. Code § 55.1-1945, but that the Association withheld those documents from examination, in violation of the VCA.

1. Did the Association Deny the Complainant's Request to Examine Association Records, in Violation of Va. Code § 55.1-1945?

This matter arises from what appears to be dispute over parking rules between the Complainant and a neighbor. This led to the Complainant requesting documents and records from the Association. The Complainant now contends that the Association violated the Virginia Condominium Act ("VCA") by failing to provide books and records upon request for examination, in violation of the VCA, specifically Va. Code §55.1-1945.

On February 8, 2025, the Complainant requested the following:

1. All records, including email correspondence, sent, received, or created by the Gates of McLean staff and/or management agent from April 1, 2025, to the present related to parking at the Gates of McLean, excluding emails from notify@buildinglink.com
2. All records, including email correspondence, related to the development of the Proposed Revisions to Policy Resolution #8: Vehicle Policies, set for public hearing on February 18, 2025, sent, received, or created since April 1, 2024, excluding emails from notify@buildinglink.com

The Complainant states that his purpose is to gain an understanding of the development of the proposed revisions to policy resolution #8.

On February 10, 2025, the manager of the Association responded to the Complainant, stating that email correspondence, personal information, and contractual matters are generally exempt from disclosure.

That same day, the Complainant responded, asking if his records request was being denied in part or in whole, and which provisions of Va. Code § 55.1-1945(C) were being used to justify the denial. The Complainant further indicated that he was fine with personal information being redacted from the records.

Several emails were exchanged back and forth between the manager of the Association and the Complainant. The manager pointed out that there are some documents on BuildingLink that may be responsive to the Complainant's request, and she further stated that she could forward emails between the Complainant and management regarding the subject matter of the original request.

During an email exchange on March 20, 2025, the manager requested additional clarification on what emails the Complainant was still alleging were being withheld by the Association from disclosure. The Association manager requested that the Complainant identify what records or category of records the Complainant was still alleging should be produced as of that date.

The Complainant responded on March 31, 2025, stating that the BuildingLink link was not responsive. The Complainant also stated that "Records and correspondence concerning my parking spot #961 (regardless of the sender) would be appreciated." The Complainant also appears to ask to see records and correspondence about parking in general or the parking of non-residents and non-owners, if the position of the Association was that other residents'/owners' parking information was confidential. The Complainant further clarifies that he was seeking the following categories of information: drafts, revisions, memoranda, notes, approvals, emails, correspondence, review, supporting documentation, report, implementation plans, studies, working papers, guidance materials, schedules, vouchers, receipts, complaints, and timelines.

In the first part of its April 22, 2025, response to the Complainant's complaint, the Association denied the request for books and records "related to the development of the Proposed Revisions to Policy Resolution #8," as the comments are drafts, rather than final records incorporated into the books and records of the association.

Va. Code § 55.1-1945 (C) reads, in part

Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the books and records of the unit owners' association...¹

To the extent that any of these putative documents were identified specifically as drafts by the Association, they are not required to be made available to the complainant for inspection, regardless of their subject matter. However, documents not related to specific draft language of the proposed revisions to any record that meets the subject matter requirements (explained in more detail below) should be disclosed, provided they do not fit into another exempted disclosure class of Va. Code § 55.1-1945 (C). Once a draft is incorporated into the books and records, however, it is subject to the production requirements of Va. Code § 55.1-1945. Therefore, if there are drafts related to "Proposed Policy Resolution #8" and "Policy Resolution #8" that are still not incorporated into the books and records of the Association, then those drafts are exempt from disclosure.

¹ Va. Code § 55.1-1945 (C).

However, the Association is cautioned not to use the drafts exemption in order to frustrate the overall goal of Va. Code § 55.1-1945 to provide transparency for Association members to examine certain books and records.² The draft exception should be viewed narrowly as pertaining specifically to draft language for documents that have not been yet incorporated into the books and records of the Association.

In the second part of its April 22, 2025, response to the Complainant's complaint, the Association denied the Complainant's request for email communications to or from management from owners other than himself for two reasons. The first reason is the Association believes that emails between other parties (who are not the Complainant) and the Association are not records as defined by Virginia law.

Under Va. Code §55.1-1945(A)

The declarant, managing agent, unit owners' association, or person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C, and E, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices. The unit owners' association shall maintain individual assessment account records. The unit owners' association shall maintain a record of any recorded lien at least as long as the lien remains effective.³

The term "records" in Va. Code § 55.1-1945(A) in the first sentence refers specifically to receipts and expenditures affecting the operation and administration of the condominium.⁴ The right of an owner to have a copy of "such records and minutes" is conferred in the next sentence, with the "such" referring back to these records that are of a financial and operation expense nature described in the first sentence.⁵

However, Va. Code §55.1-1945(B) then expands the definition of records, in stating the following, in part

Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including the unit owners' association membership list, and addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association and not for pecuniary gain or commercial solicitation. Notwithstanding any provision of law to the contrary, this right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five business days' written

² See Va. Code § 55.1-1945.

³ Va. Code § 55.1-1945(A).

⁴ *Id.*

⁵ *Id.*

notice for a unit owner association managed by a common interest community manager and 10 business days' written notice for a self-managed unit owners' association, which notice shall reasonably identify the purpose for the request and the specific books and records of the unit owners' association requested.⁶

The Association states that the Virginia Supreme Court in *Grillo v. Montebello Condominium Unit* limits the books and records related to the receipts and expenditures affecting the operation and administration, and it takes the viewpoint that this Office should strictly construe Va. Code § 55.1-1945 to the plain language of the statute.⁷ The Court in *Grillo* focused much of its analysis on Va. Code § 55-79.74:1, which has evolved into Va. Code § 55.1-1945(A), of the VCA.⁸

It is the opinion of this Office, however, that Va. Code § 55.1-1945(B), rather than Va. Code § 55.1-1945(A), is at issue here.⁹ Thus, *Grillo* has minimal value in the instant case. It is true that the VCA does not define what “all records” in Va. Code § 55.1-1945(B) (or Va. Code § 55.1-1900, for that matter) may entail, but it is clear that Va. Code § 55.1-1945(B) includes records far more expansive than just the receipts and expenditures affecting the operation and administration of the condominium contained in Va. Code § 55.1-1945(A).¹⁰

Under the rules and canons of statutory construction, we are instructed to look to the plain meaning of words and to look to the Code for definitions. The plain meaning of “all” is “the whole number, quantity, or amount.”¹¹ In the context it is used in the VCA, “books” would be the “books of accounts,” such as “a ledger” or “a book or record essential to a system of accounts.”¹² Lastly, “records” in the context of the VCA means “something that recalls or tells about past events” or “an official writing that records what has been said or done by a group, organization, or official”¹³

We can also look to the Virginia Freedom of Information Act (“FOIA”) for guidance. FOIA allows citizens the right and the mechanism to have access to public records from the governmental subdivisions which administer and enforce the law of the land, doing many of the same functions as the associations governed by the VCA. Under FOIA, a public record means,

All writings and recordings that consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording, or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees, or agents in the transaction of public business.¹⁴

⁶ Va. Code § 55.1-1945(B).

⁷ See *Grillo v. Montebello Condominium Unit Owners' Association*, 416 S.E.2d 444, 243 Va. 475 (1992); see also Va. Code § 55.1-1945

⁸ See *Grillo*, at 416 S.E.2d at 477-478.

⁹ See Va. Code § 55.1-1945(A)-(B).

¹⁰ *Id.*

¹¹ *All*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/all> (last visited April 28, 2026).

¹² *Book of Account*, <https://www.merriam-webster.com/dictionary/all> (last visited April 28, 2026).

¹³ *Record*, <https://www.merriam-webster.com/dictionary/record> (last visited April 28, 2026).

¹⁴ See Va. Code § 2.2-3701.

Going back to the VCA, Va. Code § 55.1-1945(B), says, in part that, “all books and records kept by or on behalf of the association...shall be available for examination and copying by a member in good standing or his authorized agent...” In reading these definitions of “record” in tandem with the plain language of the VCA regarding records, this Office believes that the term “records” is expansive to all information that is retained by the Association, including its Board, that relates to the operation and administration of the Association. Furthermore, the characterization of that information as a record is governed by the content of the information itself, rather than the discretion of the Association.

Turning back to the instant case, to the extent that the emails requested by the Complainant were related to the operation and administration of the Association, the emails should be considered records for the purpose of membership examination of records under Va. Code § 55.1-1945.

The Association secondly argues that, if the emails are deemed records, they are, in effect, drafts that are prohibited from examination by Va. Code § 55.1-1945 (C).¹⁵ The Association’s position, in our view, is only partially correct. As was discussed above, any records that are drafts that have not been incorporated into the Association’s records are clearly exempt from production under Va. Code § 55.1-1945 (C).¹⁶ However, once such draft documents, have been incorporated into the Association’s records, such draft documents are no longer subject to the exemption of Va. Code § 55.1-1945(C), and therefore, should be produced. Additionally, any records that constitute “all books and records kept by the Association...” and are not otherwise exempted from disclosure by Va. Code § 55.1-1945(C) are likewise subject to production.

This Office finds that the Association utilized the draft exemption within Va. Code § 55.1-1945(C) too broadly and it must re-evaluate the Complainant’s document request utilizing the analysis we have provided above.

Conclusion

Based on the foregoing, this Office finds that the Association violated the VCA, to the extent that it withheld from examination emails that were records and not subject to any exemption from production under Va. Code § 55.1-1945(C).

Required Actions

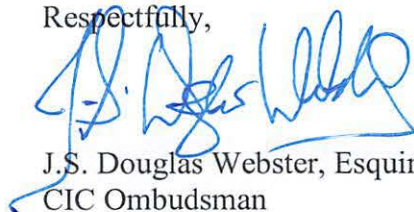
Upon receipt of this decision, the Association should examine the Complainant’s request and within 14 days of the receipt of this decision, produce for examination any emails that are related to that request which concern the operation and administration of the Association and are not otherwise exempt under Va. Code § 55.1-1945(C) because they remain drafts that have not yet been incorporated into the Association’s records.

Please contact me if you have any questions.

¹⁵ Va. Code § 55.1-1945 (C)

¹⁶ *Id.*

Respectfully,

A handwritten signature in blue ink, appearing to read "J.S. Douglas Webster", is written over the printed name.

J.S. Douglas Webster, Esquire,
CIC Ombudsman
Compliance & Investigation Division