



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

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Governor

Jessica K. Looman
Secretary of Labor

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Director

April 15, 2026

Complainant: Alan Holland
Association: Shenandoah Homeowners' Association
File Number: 2026-00290

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

The Complainant, Alan Holland ("Complainant"), submitted a complaint to Shenandoah Homeowners' Association ("Association") dated March 27, 2026. The Association provided a response to the Complainant's complaint dated June 27, 2025. The Complainant then submitted a Notice of Final Adverse Decision ("NFAD") to the Office of the Common Interest Community Ombudsman dated July 11, 2025, and the NFAD was received by our Office on July 16, 2025.

Authority

In accordance with its regulations, the Common Interest Community Ombudsman (CICO), 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, the Property Owners' Association Act, and the Virginia Real Estate Cooperative Act.

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 or Issues to be Decided

The Complainant presents a single allegation against the Association that can be addressed by this Office. That allegation asserts that the Association has not fully allowed the Complainant access to records that the Complainant originally requested on February 12, 2025, and again requested more specifically on March 13, 2025. The Complainant alleges that this alleged failure to turn over records by the Association is a violation of the Virginia Property Owners' Association Act ("POAA"), specifically Va. Code §55.1-1815. The Complainant did allege a violation of the Association bylaws, which the Complainant alleges require that the Association keep a complete record. However, this Office only has authority to determine whether a common interest community state statute or regulation has been violated.¹ As a result, should the Complainant wish to seek a remedy for a violation of the governing documents, he should seek advice of counsel to determine which forum is proper to hear such a complaint.

1. Did the Association Comply with the POAA, specifically Va. Code §55.1-1815?

The Complainant contends that the Association violated the POAA when it withheld records from him upon his request to examine them. Va. Code §55.1-1815(B) states that

Subject to the provisions of subsection C and so long as the request is for a proper purpose related to his membership in the association, 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, including:

1. The association's membership list and addresses, which shall not be used for purposes of pecuniary gain or commercial solicitation; and
2. The actual salary of the six highest compensated employees of the association earning over \$75,000 and aggregate salary information of all other employees of

¹ See Va. Code § 54.1-2354.3; see also 18VAC48-70-10.

the association; however, individual salary information shall not be available for examination and copying during the declarant control period.

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 notice for an association managed by a common interest community manager and 10 business days' written notice for a self-managed association, which notice reasonably identifies the purpose for the request and the specific books and records of the association requested.²

The Complainant made a request on February 12, 2025, for the following:

1. Any and all HOA records created within the past year and related to the request made by the Board on February 3, 2025, to Mike Bolloefer, County Administrator for Frederick County, asking that the Frederick County Board of Supervisors adopt an ordinance designating the roads in the Shenandoah & Lake Frederick HOA subdivisions as public roads for law enforcement purposes; and
2. Any and all HOA records created within the past year and related to that certain resident conducted survey which took place in May 2024 and resulted in the presentation given at the most recent HOA annual meeting entitled "Lake Frederick Traffic Safety Survey Results

The Association Manager responded to the request on February 20, 2025, stating that records could be accessed by a member, provided they were non-confidential and specifically identified. The Association Manager also said that legal counsel for the Association confirmed that, "not every communication (whether email or not) to or from an HOA representative is part of the HOA's books and records." The Association Manager also provided the Resolution and Email of votes related to the request and the Association Manager determined that there were no further records.

On March 13, 2025, the Complainant again requested access to Association documents consisting of

1. All correspondence consisting of emails to and from HOA representatives (to include, without limitation, the board members and CMC) in respect of HOA business and/ or affairs created within the past year and related to the request made by the Board on February 3, 2025 to Mike Bollhefer, County Administrator for Frederick County, asking that the Frederick County Board of Supervisors adopt an ordinance designating the roads in the Shenandoah & Lake Frederick HOA subdivisions as public roads for law enforcement purposes
2. All correspondence consisting of emails to and from HOA representatives (to include, without limitation, the board members and CMC) in respect to of that certain resident

² Va. Code §55.1-1815(B)

conducted survey which took place in May, 2024 and resulted in the presentation given at the most recent HOA annual meeting entitled “Lake Frederick Traffic Safety Survey Results”

3. All documentation created within the past year by HOA representatives (to include, without limitation, the board members and CMC) and related to that certain resident conducted survey which took place in May, 2024 and resulted in the presentation given at the most recent HOA annual meeting entitled “Lake Frederick Traffic Safety Survey Results.” As noted in the attached.
4. The record of the written approval of all the Directors regarding taking action in the absence of a meeting in respect of the vote on RW-24- Pursue County Approval of Police Enforcement of Motor Vehicle Laws on Private Streets (December 10, 2024)(as required by the HOA Bylaws and Va. Code §13.1-85 (Action without meeting of board of directors)).

On March 21, 2025, the Association Manager submitted the emails that she believed were responsive to the Complainant’s request to him. However, the Complaint of March 27, 2025, alleges that the Complainant believes that there are more responsive documents contained in the emails of the Association Board members, as he believes that the Association Board conducts much of its business via email.

In its response, the Association stated that it had complied fully with the Complainant’s request. The Association also indicated that while the Complainant did not specifically plead his request with specificity, the Association attempted to respond and provide responsive documents in accordance with the POAA.

There is no information in the record that indicates that the Association has failed to comply with the Complainant’s request for emails and other records, concerning the requests above. The Association responded to the February 12, 2025, access request by the Complainant on February 20, 2025. The Association, which is professionally managed, responded to the access request in five business days and thus was compliant under Va. Code §55.1-1815(B), as February 17, 2025, was Presidents’ Day.³ The Association Manager did not respond to the Complainant’s March 13, 2025, request until March 21, 2025 (a span of more than five business days, responding on the business day six), in violation of Va. Code §55.1-1815(B). However, other than this violation, this Office cannot determine whether there was any other violation of Va. Code §55.1-1815 regarding the production of documents (or lack thereof) by the Association. This Office does not have subpoena power and is unable to search the records of the Association to determine whether their responses were truly responsive.

With that said, there are some things to which this Office would like to draw attention regarding document production and what should be identified as a record. The email exchange between the Complainant and the Association Manager makes references to some emails that the

³ *Id.*

Association does not consider Association records. The NFAD written by the Association also indicates that

the POA Act does not dictate what types of documents must be maintained as part of the Association's books and records. Instead, the Association (acting through its authorized representatives) have the authority to determine what books and records will be maintained by the association. The Association does not have an obligation to maintain as part of its record every email, letter, summary, or discussion related to the Association.

This characterization by the Association is troubling, not only because it minimizes the types of information it needs to keep as a record, but also because it makes clear that it believes that it has the discretion to decide what documents are official records, ripe for disclosure.

It is true that the POAA does not define the term "record" in Va. Code §55.1-1815, but it expressly states that "***All books and records*** kept by or on behalf of the association shall be available for examination and copying ...".⁴ The emphasized terms are not defined in the POAA. Thus, under the rules and canons of statutory construction, we are instructed to look to their plain meaning and to look to the Code for definitions. The plain meaning of "all" is "the whole of."⁵ In the context it is used in the POAA, "books" would be the "books of accounts," such as "any journal, ledger, and supporting vouchers included in a system of accounts."⁶ Lastly, "records" in the context of the POAA means "the official writings intended to be preserved."⁷

We can also look to the Virginia Freedom of Information Act ("FOIA") for guidance.⁸ 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 POAA. 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.⁹

Going back to the POAA, Va. Code 55.1-1815(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..."¹⁰ In reading these definitions of "record" in tandem with the plain language of the POAA regarding records, this Office believes that it is clear that the term "records" is expansive to all information that is retained by the Association, including its

⁴ See Va. Code §55.1-1800; see also Va. Code §55.1-1815

⁵ All taken from Dictionary.com. May need to use/cite a Webster's.

⁶ "

⁷ "

⁸ See Va. Code §2.2-3700 through §2.2-3714.

⁹ See Va. Code §2.2-3701

¹⁰ Va. Code §55.1-1815(B)

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.

Considering the above analysis, the Association and its management company would do well to remember that it is conducting the business of governance, serving the members that make up the Association. In the spirit of good governance and transparent dealing and decision-making, the Association should look at how the term “record” is defined elsewhere in Virginia law, that has relation to governance. The FOIA is an excellent point of reference. Further, the definition of “electronic means” contained in the POAA, specifically, Va. Code §55.1-1800, uses terms such as “record,” as defined by the Uniform Electronic Transactions Act (“UTEA”), as part of its definition.¹¹ Under the UTEA, a record is, “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.”

As was said above, it is impossible to say that the Association has, at the time of this decision, not complied with the POAA. Therefore, to the extent that this Office’s interpretation encompasses additional information that was not previously disclosed or allowed to be accessed by the Complainant, the Association is instructed to allow the Complainant access to that information within five business days of receiving this decision, provided they are not otherwise prohibited from disclosure under Va. Code §55.1-1815(C).¹²

Conclusion

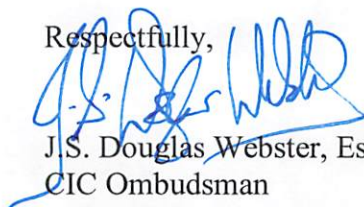
Based on the foregoing, this Office found that there was a violation of the POAA, Va. Code §55.1-1815(B), with respect to the March 13, 2025, request for access to Association records.

Required Actions

The Association should review the document production deadline requirements of §55.1-1815(B). Furthermore, the Association should search for any additional, responsive information that has been retained by the Association, including its Board, which relates to the document request of March 13, 2025. If there are records that are responsive, the Complainant should be given access to such records within 5 business days. If there are no further records that are responsive, the Complainant should also be notified of this determination within 5 business days.

Please contact me if you have any questions.

Respectfully,


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

¹¹ See Va. Code §55.1-1800; see also Va. Code §59.1-480

¹² See Va. Code §55.1-1815