

SUPREME COURT OF VIRGINIA

Transparent GMU v. George Mason University

Transparent GMU · No. Record No. 181375 · Decided December 12, 2019

SUMMARY

The Supreme Court of Virginia considered whether the George Mason University Foundation, a privately held nonprofit corporation that manages donations for George Mason University, is subject to the Virginia Freedom of Information Act. The Court held that the Foundation is not a public body under the statute and that its records are not subject to disclosure under VFOIA. The Court affirmed the dismissal of Transparent GMU’s amended petition for writ of mandamus.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice Cleo E. Powell; All the Justices
JURISDICTION	Virginia
DECIDED	December 12, 2019
DOCKET	Record No. 181375
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Circuit Court of Fairfax County's dismissal with prejudice of a first amended verified petition for writ of mandamus seeking donor information under the Virginia Freedom of Information Act.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. The existence of an agency relationship is generally a question of fact unless it depends on unambiguous written documents or undisputed facts.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Transparent GMU, Augustus Thomson v. George Mason University, George Mason University Foundation, Inc.

TOPICS

- statutory interpretation
- administrative law
- corporate law
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the George Mason University Foundation was an "entity of" GMU created to perform delegated functions or advise GMU, and therefore a public body under VFOIA.
2. Whether the Foundation was wholly or principally supported by public funds and therefore a public body under VFOIA.
3. Whether the Foundation was GMU's alter ego or agent for purposes of VFOIA.
4. Whether records concerning private donations held by the Foundation were public records because they related to the transaction of public business.
5. Whether the Foundation's records became subject to VFOIA merely because Dr. Janet E. Bingham served in official capacities for both GMU and the Foundation.

HOLDINGS

1. The Foundation was not an "entity of" GMU because it was an independent corporation, not produced or distributed by GMU and not created by GMU to perform delegated governmental functions.
2. The Foundation was not a public body under VFOIA because it was not supported wholly or principally by public funds.
3. The Foundation was not GMU's alter ego, and veil piercing was not warranted.
4. The Foundation was not shown to be GMU's agent; in any event, agency status would not make records in the Foundation's custody subject to VFOIA because the Foundation was not a public body.
5. The requested records concerning private donations were not public records subject to VFOIA because they were held by the private Foundation and related to its private-donor gift-management mission rather than the transaction of public business.
6. The Foundation's records were not automatically subject to VFOIA merely because Dr. Bingham served both as a GMU vice president and as the Foundation's president and chief executive officer.

KEY QUOTATIONS

"The circuit court did not err in concluding that "where an employee of a public body serves in an official capacity for a third party, that service does not automatically subject documents held by that third party to VFOIA liability." (24)

"Had the General Assembly intended the unreserved inclusion of non-profit foundations, that exist for the primary purpose of supporting public institutions of higher education, as public bodies under VFOIA, it could have so provided, but it has not." (25)

FACTUAL BACKGROUND

The George Mason University Foundation is a private Virginia nonprofit corporation that receives, manages, invests, and disburses private gifts for the benefit of George Mason University. GMU and the Foundation

maintained separate corporate structures, bylaws, articles of incorporation, boards, and contractual arrangements, although they had a close affiliation, shared some personnel, and the Foundation provided substantial financial support to GMU. Transparent sought records concerning private donations associated with several Koch-affiliated charitable foundations. The Foundation denied that it was a public body or that its records were public records under VFOIA.

PROCEDURAL HISTORY

Transparent GMU and Augustus Thomson submitted VFOIA requests to George Mason University and the George Mason University Foundation for records concerning private charitable contributions to GMU. After the respondents filed demurrers and GMU filed a plea in bar of sovereign immunity, the circuit court sustained the plea as to claims against GMU and sustained the Foundation's demurrer as to certain claims. Following a bench trial on whether the Foundation was a public body, the circuit court found that the Foundation was not subject to VFOIA and dismissed the amended petition with prejudice. The Supreme Court of Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Virginia Educ. Ass'n v. Davison, 294 Va. 109, 115 (2017)
- Conyers v. Martial Arts World of Richmond, Inc., 273 Va. 96, 104 (2007)
- The Daily Press, LLC v. Office of the Exec. Sec'y of the Sup. Ct. of Va., 293 Va. 551, 557-58 (2017)
- American Tradition Inst. v. Rector & Visitors of Univ. of Va., 287 Va. 330, 339-40 (2014)
- Beck v. Shelton, 267 Va. 482, 487, 492 (2004)
- RF&P Corp. v. Little, 247 Va. 309, 316 (1994)
- Fitzgerald v. Loudoun Cty. Sheriff's Office, 289 Va. 499, 504-05 (2015)
- C.F. Trust, Inc. v. First Flight L.P., 266 Va. 3, 10 (2003)
- Richfood, Inc. v. Jennings, 255 Va. 588, 592-93 (1998)
- Acordia of Virginia Ins. Agency, Inc. v. Genito Glenn, L.P., 263 Va. 377, 384 (2002)
- Reistroffer v. Person, 247 Va. 45, 48 (1994)
- Washington & Old Dominion Users Ass'n v. Washington & Old Dominion R.R., 208 Va. 1, 6 (1967)