



Jessie Barrington <jessie@culturalheritagepartners.com>

RE: DMAS/FOIA

Pumphrey, Brian E. <bpumphrey@mcguirewoods.com>

Thu, Jan 2, 2025 at 12:40 PM

To: "Cobb, Matthew" <mcobb@williamsmullen.com>, "jessie@culturalheritagepartners.com"

<jessie@culturalheritagepartners.com>

Cc: "Woolard, John J." <JWoolard@mcguirewoods.com>

Matt and Jessie:

Thank you for your email. DMAS will agree to extend the comment period to 60 calendar days following the completion of the FOIA production, and will agree to meet with your client in person, so long as that meeting occurs within – and not after – the 60 day extension period. Specifically, the meeting would need to occur on or before the 30th day of that extension period.

In offering this agreement, DMAS does not agree or concede that its historic practices were not in accordance with any tribal consultation requirements.

Please let me know if we are in agreement.

Thanks,

Brian

Brian E. Pumphrey

Partner

McGuireWoods LLP

Gateway Plaza

800 East Canal Street

[Richmond, VA 23219-3916](#)

T: +1 804 775 7745

M: +1 804 647 5126

F: +1 804 698 2018

bpumphrey@mcguirewoods.com

[Bio](#) | [VCard](#) | [LinkedIn](#) | www.mcguirewoods.com

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From: Cobb, Matthew <mcobb@williamsmullen.com>
Sent: Tuesday, December 31, 2024 2:02 PM
To: Pumphrey, Brian E. <bpumphrey@mcguirewoods.com>; jessie@culturalheritagepartners.com
Cc: Woolard, John J. <JWoolard@mcguirewoods.com>
Subject: RE: DMAS/FOIA [WMIMAN-IWOVRIC.FID2726720]

****EXTERNAL EMAIL; use caution with links and attachments****

Brian,

After reviewing your proposal with my client, we are requesting DMAS extend the time frame to respond to the Notice of Intent to Amend the State Plan Amendment for 60 days after we receive the completed FOIA response. The 60 days will give us time to not only conduct a thorough review of the production so that we can provide an informed response to the notice, but it will also give additional time for DMAS to engage in meaningful tribal consultations. In exchange for extending the response time to 60 days following receipt of the FOIA response and an agreement to engage in true tribal consultation, which includes meeting with my client to discuss the State Plan Amendment and the provision of tribal health services, we would agree not to file the Petition for Mandamus. Of course, we would reserve our rights to proceed with FOIA litigation if the production is lacking in some respect and we could not reach agreement on how to cure it.

Please let me know if DMAS is amenable to such an agreement. Considering tomorrow is a holiday and you may have difficulty receiving a response today, we will not file the Petition today. I look forward to hearing from you and hope you are able to enjoy New Year's eve and day.

Thanks,
Matt



Matthew M. Cobb

Attorney

T 804.420.6390 | C 804.986.3498

[email](#) | [v-card](#) | [website](#) | [LinkedIn](#)

Williams Mullen Center | 200 South 10th Street, Suite 1600 | P.O. Box 1320 (23218) | Richmond, VA 23219

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From: Pumphrey, Brian E. <bpumphrey@mcguirewoods.com>
Sent: Monday, December 30, 2024 3:43 PM
To: Cobb, Matthew <mcobb@williamsmullen.com>; jessie@culturalheritagepartners.com
Cc: Woolard, John J. <JWoolard@mcguirewoods.com>
Subject: RE: DMAS/FOIA

Email from external sender

Thanks Matt. One point of clarification. We are, in fact, not giving your client only 30 days to review the production. As mentioned, we will begin a rolling production of documents in 10-14 days. The 30-day extension period does not begin until the production is complete. Hence, more than 30 days, for some of the production. I look forward to hearing from you.

Brian E. Pumphrey

Partner

McGuireWoods LLP

Gateway Plaza

800 East Canal Street

[Richmond, VA 23219-3916](#)

T: +1 804 775 7745

M: +1 804 647 5126

F: +1 804 698 2018

bpumphrey@mcguirewoods.com

[Bio](#) | [VCard](#) | [LinkedIn](#) | www.mcguirewoods.com

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From: Cobb, Matthew <mcobb@williamsmullen.com>
Sent: Monday, December 30, 2024 3:37 PM
To: Pumphrey, Brian E. <bpumphrey@mcguirewoods.com>; jessie@culturalheritagepartners.com
Cc: Woolard, John J. <JWoolard@mcguirewoods.com>
Subject: RE: DMAS/FOIA [WMIMAN-IWOVRIC.FID2726720]

****EXTERNAL EMAIL; use caution with links and attachments****

Brian,

Thank you for your email and follow up from our conversation this morning. If I understand the proposal correctly, DMAS is only willing to provide my client 30 days to review all of the documents in order to prepare its response to the Notice of Intent. I'm not sure that is a reasonable extension considering the volume of documents you have indicated exists and the amount of time DMAS has taken to produce them. But, I appreciate your effort to try and find a solution. We will convey your proposal to our client and will circle back.

FOIA permits state agencies to make "reasonable charges" for the production of documents and my client is willing to pay for such allowable costs. We will review any cost estimate DMAS provides, however, we reserve the right to object to any cost estimate that is not reasonable. For example, I do not believe a Court would conclude DMAS' cost of retaining what you referred to as a "team of attorneys" at your firm to review the documents or the use of an eDiscovery platform to constitute "reasonable charges." Especially when considering DMAS had months to produce the documents on its own.

Thanks,
Matt



Matthew M. Cobb

Attorney

T 804.420.6390 | C 804.986.3498

[email](#) | [v-card](#) | [website](#) | [LinkedIn](#)

Williams Mullen Center | 200 South 10th Street, Suite 1600 | P.O. Box 1320 (23218) | Richmond, VA 23219

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From: Pumphrey, Brian E. <bpumphrey@mcguirewoods.com>
Sent: Monday, December 30, 2024 1:35 PM
To: Cobb, Matthew <mcobb@williamsmullen.com>; jessie@culturalheritagepartners.com
Cc: Woolard, John J. <JWoolard@mcguirewoods.com>
Subject: DMAS/FOIA

Email from external sender

Matt and Jessie:

Thanks for your call this morning. I understand a primary concern of your client is to have sufficient time to review the DMAS FOIA production before the current comment period expires. As mentioned on our call, we anticipate beginning a rolling production of documents in the next 10-14 days with the expectation that all documents would be produced by the end of January. In order to provide certainty to your client, DMAS is willing to extend the current comment period by 30 days following completion of our FOIA production. For example and by way of illustration only, if DMAS were to complete its production on January 31, the comment period would then be extended until March 3 (30 days through Sunday March 2, which we would roll to Monday March 3).

In exchange for this commitment, your client would agree not to initiate the FOIA litigation. Of course, once you have had a chance to review the production, you would have every right to come back to us if you believe the production is lacking in some respect. The parties would then reserve all of their rights in that regard.

Please note that DMAS intends to seek allowable costs for its review of these documents. Once we have collected and processed all of the documents, we will provide you with an estimate of costs.

Please let me know if your client is in agreement. I am happy to discuss today as needed.

Thanks,

Brian

Brian E. Pumphrey

Partner

McGuireWoods LLP

Gateway Plaza

800 East Canal Street

Richmond, VA 23219-3916

T: +1 804 775 7745

M: +1 804 647 5126

F: +1 804 698 2018

bpumphrey@mcguirewoods.com

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