

Editorial: Suing for public access

April 20, 2022

Gov. Glenn Youngkin wants people to email him about any instances of educators in Virginia public schools teaching material that he considers “inherently divisive.” He has said he will use that input to shape policy decisions affecting the commonwealth’s classrooms.

When asked for copies of those emails, however, the governor balked, rejecting requests under the Virginia Freedom of Information Act made by more than a dozen media organizations for those records.

Whether emails to that official government address are a matter of public record now will be decided by the courts. Last week, The Virginian-Pilot and Daily Press joined a coalition that filed suit against the Youngkin administration to obtain those records.

While this might seem like the media picking a fight with the governor, and some corners will frame this action as partisan, transparency in government isn’t a cause limited to the press, nor is it the dominion of any party’s agenda.

Rather, openness in the public sector is an imperative in a government elected by the people and in service to the people. It should be warmly embraced by public officials on both sides of the aisle and fiercely advocated by all.

As the Virginia FOIA makes clear in state code: “The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. ... The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government.”

In this case, Youngkin’s email tip line sits at the center of a critical policy debate about school curricula happening in Richmond and in our communities.

Only hours after taking office, the governor signed Executive Order No. 1 to end “the use of inherently divisive concepts” in public education. It was an extension of his campaign, in which he pledged to remove “critical race theory,” a law school concept not taught in public schools.

Subsequent administration actions instead show an effort to roll back programs focused on equity in education, including programs aimed at closing the achievement gap between Black and white students. And the governor’s use of the term “inherently divisive” is so nebulous that it exists in the eye of the beholder.

So what sort of input is the administration relying on to shape its policy outlook? That's a great question. And the governor's creation of an email tip line to solicit complaints from the public would go some way toward illuminating that process.

That's why media organizations, including The Pilot and Daily Press, requested access to the emails. But the governor argued these were exempted under a provision that allows withholding "working papers and correspondence of the Office of the Governor." The lawsuit contends that emails to the tip line are not correspondence of the office and do not qualify for the exemption.

The lawsuit represents more than an attempt to review emails that will affect policy decisions in Virginia. Given the grounds on which the governor's office refused those FOIA requests, it asks the courts to determine the scope of an exemption in the state's open government law related to these "working papers," which is often decried by open government advocates as overly broad and often abused.

It's important to note that Virginia's FOIA does not mandate that these records be withheld. The governor could release these emails if he wished and he likely would if they supported his policy objectives.

But the broader issue remains: If the governor proposes to reshape Virginia public education based on evidence, he should be willing, if not eager, to provide that evidence. It's unfortunate that access to that information has required legal intervention, but the public deserves to have a clear view of what's happening in Richmond and we hope the courts provide it.