

# SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING  
100 NORTH NINTH STREET  
RICHMOND, VIRGINIA 23219  
(804) 786-2259

## **Granted Appeal Summary**

### **Case**

MATTHEW KEIL v. JIM O’SULLIVAN, IN HIS OFFICIAL CAPACITY AS SHERIFF OF CITY OF CHESAPEAKE, VIRGINIA  
(Record Number 240824)

### **From**

The Court of Appeals of Virginia.

### **Counsel**

Kevin E. Martingayle (Bischoff Martingayle, P.C.) and A. Bartlett Keil (Green Hampton & Kelly, PLLC) for appellant.

Jeff W. Rosen and Lisa Ehrich (Pender & Coward, P.C.) for appellee.

### **Assignments of Error**

1. Because Sheriff Jim O’Sullivan (“Sheriff O’Sullivan”) failed to respond to March 9 and March 28, 2023 requests made pursuant to Code of Virginia §§2.2-3700 et. seq. (“FOIA”) and 22.3800 et. seq. (“Government Data Act”), the trial court erred in finding in favor of Sheriff O’Sullivan and erred in denying Keil relief, and the Court of Appeals erred in affirming the trial court.

2. Because Sheriff O’Sullivan (a) failed to make any timely claims of exemptions or exclusions under the Government Data Act in response to Keil’s requests for information, (b) failed to make any timely claim that the Government Data Act did not apply to Keil, and (c) failed to make any other timely argument in support of his decision to deny Keil access to the records Keil requested pursuant to the Government Data Act, the trial court erred in rejecting Keil’s waiver arguments, erred in ruling in favor of Sheriff O’Sullivan and erred in denying Keil any form of relief, and the Court of Appeals erred in affirming the trial court.

3. The trial court erred in ruling that Keil “is not a ‘data subject’ and thus the [Government] Data Act does not apply.” R. 426. Accordingly, the trial court erred in ruling in favor of Sheriff O’Sullivan and erred in denying Keil any form of relief, and the Court of Appeals erred in affirming the trial court.

4. The trial court erred in interpreting the dispute between the parties as limited to an “internal investigation file” about Keil (R. 419, 425-26) even though Keil’s requests (R. 19-20) were broader than that. Accordingly, the trial court erred in ruling in favor of Sheriff O’Sullivan and erred in denying Keil relief he requested, and the Court of Appeals erred in affirming the trial court.

5. Because Sheriff O’Sullivan admitted that he violated FOIA and Government Data Act provisions when he failed to provide Keil with all of Keil’s performance evaluations in a timely manner, the trial court erred in ruling in favor of Sheriff O’Sullivan and erred in denying Keil any form of relief, and the Court of Appeals erred in affirming the trial court.

6. The trial court erred in failing to determine that Sheriff O’Sullivan violated the Government Data Act when Sheriff O’Sullivan unlawfully and unnecessarily disseminated information about Keil derived from supposedly confidential internal affairs records, and, therefore, the trial court erred in failing to grant Keil relief, including the injunctive relief he requested, and the Court of Appeals erred in affirming the trial court.