



ABRENIO LAW

(703) 570-4180 TEL | (703) 574-5653 FAX
11325 Random Hills Road, Suite 360 | Fairfax, VA 22030

May 12, 2022

VIA Email & Twitter

Hon. Jason S. Miyares
Attorney General of Virginia
Office of the Attorney General
c/o D.J. Jordan
foia@oag.state.va.us
mailoag@oag.state.va.us

FOIA REQUEST & RECORDS PRESERVATION REQUEST

RE: “Attorney General Miyares’ Statement Regarding the Threat to Catholic Masses this Sunday”

Dear Attorney General:

On May 7, 2022, you issued a statement via Twitter regarding purported threats to Virginia Catholic Masses “this Sunday,” which would have been May 9, 2022.¹ In that statement, you also referenced “Virginia criminal law” and “Federal law” that authorizes you to take action to respond to such threats to churches in Virginia.

In response, I issued a FOIA via Twitter that same day, on May 7, 2022, requesting that you provide details as to the threats to Virginia churches as well as specific statutes you referenced in the Virginia and Federal Code. Through your Chief of Staff, I received the following response via Twitter:

Mr. Abrenio, the best way to request information from the Office of Attorney General or file a FOIA request is by emailing mailoag@oag.state.va.us However, in response to your question, please see Virginia Code 18.2-418 & 419, and also 18 U.S. Code 1507.

¹ You also appeared on Fox News the following day and repeated reference threats to “Catholic Churches in Virginia.”(See https://video.foxnews.com/v/6305785201112?playlist_id=6097749916001#sp=show-clips)

While I appreciate your response to my FOIA request, I do find it to be deficient. As part of the Virginia legal community, traditionally, I look to the Attorney General's Office for guidance on unique legal matters. Certainly, when the Attorney General's Office references potential criminal and civil liability to the members of our great Commonwealth, I pay attention.

As I'm sure you are aware, our community is living through very uncertain times. Regardless of which side of the abortion debate you stand, there is no doubt that the recent leak of the United States Supreme Court's draft opinion, seemingly overturning Roe v. Wade, caused waives throughout our community. It is at those times that we look to, among others, our local leaders and elected officials for guidance on how to move forward.

I fear that many members of our community interpreted your May 7th and May 8th statements as unsettling and seemingly blurring the lines between Church and State. Without proper factual and legal foundation, I'm also worried that your statement could be read to create a chilling effect upon the members of our community in their exercise of their First Amendment Rights.

To that end, I'm making the FOIA request to provide clarity to our community as to the specific threats to Virginia churches that you referenced, that you received prior to your statements, which warranted your May 7th and May 8th statements. I also want to clarify the exact criminal and civil statutes you intend to pursue should a member of our community violate said statutes. Indeed, the purpose of criminal and civil statutes, at least in part, is to educate individuals of what actions may lead to potential criminal and civil liability.

As such, here's what I'm requesting that you and/or your office provide:

- Any and all information that you and/or your office received regarding **threats to Virginia churches** that related to May 9th services;
- I seek this information whether by letter, email, text, audio or video, or any other form;
- The information I seek also relates specifically to information you received prior to issuing your May 7th statement.
- Any and all communications you and/or your office had with Fox News regarding your interview the following day, May 8th, regarding these threats;
- Any and all communications you and/or your office had among each other regarding your May 8th Fox News interview;
- Regarding the information I seek about the Fox News interview, I'm asking for such communication whether by letter, email, text, audio or video, or any other form; and
- The list of specific citations to the Virginia Code and/or "Federal Law" that you were referring to in your May 7th statement.²

² While you did reference Virginia Code 18.2-418 and 19 and 18 USC 1507, at least from my reading, those codes have nothing to do with actions taken in or near churches. Additionally, you failed to respond to my request regarding the threats to churches you received prompting the May 7th statement.

As you know, pursuant to Virginia Code Section 2.2-3700, *et. al.*, you do have five (5) business days to respond to my FOIA Request. While you did initially respond to my May 7th FOIA two days later, I do believe that response was deficient. However, I do want to provide you ample opportunity to fully respond. Therefore, I agree that the five (5) business days will begin to run from the date of this letter.

Should your Office determine that any information that I seek is not subject to FOIA, I'd kindly ask that you preserve said documents and provide a detailed response upon which you base withholding said documents. However, as you know our FOIA statute's explicit purpose is to ensure "ready access to public records in the custody of a public body or its officers and employees." Va. Code § 2.2-3700(B).³

Also, should your response produce a cost exceeding \$60.00, I'd kindly ask you to provide a ledger estimating said cost for my approval. Thank you, and I look forward to your office shedding further light on your May 7th and May 8th statements so that our fellow Virginians can be better informed about our rights and responsibilities.

Sincerely,



James S. Abrenio

³ "All public records . . . shall be presumed open . . ." Va. Code § 2.2-3700(B) (emphasis added) *see also* Va. Code § 2.2-3704 ("all public records shall be open to citizens of the Commonwealth"). Further, the provisions of [FOIA] 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." *Fitzgerald v. Loudoun County Sheriff*, 289 Va. 499, 505 (2015). Even broader when you consider how broad the definition of public records is: "public records" are virtually any "writings and recordings . . . regardless of physical form or characteristics . . . in the possession of a public body," its employees or its agents. *See* Virginia Code §2.2-3701.