

centerforconstitutionalrights
on the front lines for social justice

December 29, 2017

Via Fax and Federal Express

Clerk of Court
St. Charles Parish
Att: Civil Clerk
15045 River Road
P.O. Box 424
Hahnville, LA 70057
Fax: (985) 783-2005

Re: *Center for Constitutional Rights v. St. Charles Parish Sheriff's Office*
29th JDC, No. 83927

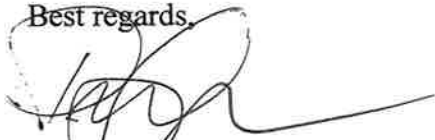
Dear clerk:

Enclosed please find the following pleadings we are filing this date in the above-referenced matter via fax and regular mail:

1. Plaintiff's Memorandum of Law in Opposition to Defendants' Exceptions of No Cause of Action and Lack of Procedural Capacity;
2. Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Strike;
3. Plaintiff's Memorandum in Reply to Defendant's Opposition to Petition for Writ of Mandamus.

I am available should have any questions or concerns.

Best regards,



Pamela Spees
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Enclosures

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TWENTY-NINTH JUDICIAL DISTRICT COURT

PARISH OF ST. CHARLES

STATE OF LOUISIANA

THE CENTER FOR
CONSTITUTIONAL RIGHTS

Civil Action No. 83927

Plaintiff,

v.

Division "C"

ST. CHARLES PARISH
SHERIFF'S OFFICE and
GREG CHAMPAGNE, in his official
capacity as Sheriff of St. Charles Parish
and Custodian of Records,

Defendants.

Filed: _____

Deputy Clerk _____

**PLAINTIFF'S MEMORANDUM IN OPPOSITION
TO DEFENDANTS' EXCEPTION OF NO CAUSE OF ACTION
AND LACK OF PROCEDURAL CAPACITY**

NOW INTO COURT, through undersigned counsel, comes Plaintiff, the Center for Constitutional Rights, who submits the following Memorandum in Opposition to Defendants' Exceptions of No Cause of Action and Lack of Procedural Capacity.

STANDARD OF REVIEW

Defendants ask this Court to dismiss this Petition for public records based on legally unsupported arguments and despite decision after decision by the Louisiana Supreme Court which emphasize that: 1) the Public Records Act is to be construed liberally in favor of free and unrestricted access to public records; 2) if there is any doubt about whether the records should be made public or not, doubt must be resolved in favor of the public's right to see the records; and 3) that the law was not intended to qualify this right in any way. *See New Orleans Bulldog Society v LSPCA*, 2016-C-1809, 222 So.3d 679, 684 (La. 2017); *Shane v. The Parish of Jefferson*, 2014-2225, p. 9-10 (La. 2015), 209 So.3d 726, 735-36; *In re Matter Under Investigation*, 2007-1853 (La. 2009), 15 So. 3d 972, 989; *Capital City Press v. East Baton Rouge Parish Metropolitan Council*, 96-1979 (La. 1997), 696 So.2d 562, 564; *Title Research Corp. v. Rausch*, 450 So.2d 933, 937 (La. 1984).

SUMMARY OF ARGUMENT

Defendants' arguments are legally unsound and serve only to muddy the waters of what is a simple and straightforward public records request. Plaintiff asks that public records be made public; Defendants want to avoid doing so. Contrary to what Defendants argue, Plaintiff has the capacity to seek records and bring an action under the Act. Defendants' suggestion that Plaintiff's demand for public records is somehow unethical, improper, or borderline criminal cannot be taken seriously, not least because they are levelled without any citation to a single case or statute or any legal authority whatsoever. Such unfounded accusations should not be condoned by this Court and must not distract the Court from ordering Defendants to make the public records requested herein public. It is particularly troubling that Defendants, including the chief law enforcement officer in the parish, would accuse a member of the public of criminal conduct for requesting public records.

LAW AND ARGUMENT

I. The Exception of No Cause of Action Must Be Denied.

Defendants in this matter are Sheriff Greg Champagne and the St. Charles Parish Sheriff's Office. Defendants do not argue that the Sheriff cannot be sued nor do they argue that he is not a proper party to this action. Therefore, this matter must go forward.

Defendants do suggest, without citing a single case, that the Sheriff's Office cannot be sued and should be dismissed from this proceeding. They make this argument despite the fact that the St. Charles Parish Sheriff's Office has been made a defendant in numerous cases. Two recent examples include: *Oubre v. St. Charles Par. Sheriff's Office*, 2016-409 (La. App. 5 Cir. 12/14/16), 209 So. 3d 302 (dismissed on grounds that plaintiff had not met all the requirements for eligibility for benefits); *Becnel v. St. Charles Parish Sheriff's Office*, 2015 U.S. Dist. LEXIS 128461 (E.D.La. 2015) (dismissing a civil rights claim for failure to plausibly allege the existence of an official policy or custom). Neither of these cases were dismissed on the basis that the Sheriff's Office lacked the capacity to be sued. Out of an abundance of caution and in line with common practice in public records litigation, Plaintiff included the head of the agency and the agency itself. *See, e.g., New Orleans Bulldog Soc'y v. La. SPCA*, 222 So.3d 678 (La. 2017) (suing the entity and CEO of the entity); *Alliance for Affordable Energy v. Frick*, 96-1763 (La. App. 4 Cir. 1997), 695 So.2d 1126 (suing director of the City Council Utilities Regulatory Office and the City of New Orleans).

II. Capacity to Bring Legal Action for Public Records.

Defendants ask this Court to dismiss this public records case on the basis of several arguments challenging Plaintiff's capacity to bring this case, none of which are based in law or fact or hold any legal weight at all.

Defendant's first argument is that Plaintiff, as a foreign corporation, was required under La. R.S. 12:314A to obtain "authorization to transact business" prior to presenting "any judicial demand before any court in this state." Def. Exception at 2. This argument collapses by reading the entirety of the statute they cite. The very same set of laws governing foreign corporations in Louisiana specifically provides that "[m]aintaining or defending any action or suit" "shall not be considered to be transacting business in this state, for the purpose of being required to procure a certificate of authority pursuant to R.S. 12:301." La. R.S. 12:302A. Defendants again cite no other authority for this argument. Moreover, as Defendants are no doubt aware, the Louisiana Public Records Law has no residency or domicile requirements for persons seeking access to public records. *See* La. R.S. 44:31.

Defendants' second argument is, as noted before, a series of accusations that Plaintiff's request for public records is somehow unethical, improper, or even criminal. These accusations are leveled without any citations to any case, statute, or other legal authority whatsoever and must not be countenanced by this Court. Defendants ask this Court to dismiss this case because the person who initiated the request on behalf of Plaintiff somehow engaged in the unauthorized practice of law because he "does not appear to be licensed to practice law in the State of Louisiana or New York" and the Plaintiff is a "self-proclaimed non-profit public interest law firm," a situation they describe as an "unethical and potentially criminal quagmire." Def. Exception at 2.

If there is a quagmire here, it is the one Defendants have created with these baseless allegations. It is indisputable that the Louisiana Public Records Act has no requirement that a requester be a lawyer, *see* La. R.S. 44:31, and it matters not whether the non-profit entity is a legal organization or was established for some other purpose. *See, Indep. Weekly, LLC v. Pope*, 2016-282 (La. App. 3 Cir. 2016), 201 So. 3d 951, 957 (holding that "person" includes a body of persons, whether incorporated or not and that courts must presume that the reference to 'person' in La. R.S. 44:1 *et seq.* "refers to not only natural persons, but to corporations or companies"). Contrary to Defendants assertions, virtually any requests made under the Public Records Act are in the nature of a legal demand inasmuch as requesters seek to exercise and enforce rights under the law,

whether that request is made by a non-lawyer teacher, farmer, nurse, or non-profit organization.

Both undersigned counsel representing Plaintiff in this matter are admitted to practice in the state of Louisiana. To suggest that a person writing a letter on behalf of an organization asking for public records is engaging in unethical or criminal conduct is totally contrary to the letter and spirit of the public records law as written and as interpreted by the Louisiana Supreme Court.

Conclusion

Defendants' Exceptions should be denied.

Respectfully submitted,



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Attorneys for the Plaintiff

TWENTYNINTH JUDICIAL DISTRICT COURT

PARISH OF ST. CHARLES

STATE OF LOUISIANA

**THE CENTER FOR
CONSTITUTIONAL RIGHTS**

Civil Action No. 83927

Plaintiff

v.

Division C

**ST. CHARLES PARISH
SHERIFF'S OFFICE** and
GREG CHAMPAGNE, in his official
capacity as Sheriff of St. Charles Parish
and Custodian of Records,

Defendants.

Filed: _____

Deputy Clerk _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been transmitted to opposing counsel on
this 29th day of December, 2017, by fax and Federal Express.



PAMELA C. SPEES
Attorney for Plaintiff

TWENTY-NINTH JUDICIAL DISTRICT COURT

PARISH OF ST. CHARLES

STATE OF LOUISIANA

**THE CENTER FOR
CONSTITUTIONAL RIGHTS**

Civil Action No. 83927

Plaintiff,

v.

Division "C"

**ST. CHARLES PARISH
SHERIFF'S OFFICE** and
GREG CHAMPAGNE, in his official
capacity as Sheriff of St. Charles Parish
and Custodian of Records,

Defendants.

Filed: _____

Deputy Clerk _____

**PLAINTIFF'S MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION TO STRIKE**

NOW INTO COURT, through undersigned counsel, comes Plaintiff, the Center for Constitutional Rights, who submits the following Memorandum in Opposition to Defendant Greg Champagne's Motion to Strike. Contrary to what Defendant argues, the allegations targeted in this motion are material, relevant and necessary to Plaintiff's Petition for Writ of Mandamus Under the Public Records Act.

STANDARD OF REVIEW

A motion to strike under La. Code of Civ. Proc. Art. 964 is "disfavored because striking a portion of a pleading is a drastic remedy, and because it is often sought by the movant as a dilatory tactic." *Hazelwood Farm, Inc. v. Liberty Oil & Gas Corp.*, 2001-0345 (La. App. 3 Cir. 2001), 790 So. 2d 93, 98. A motion to strike "is only proper if it can be shown that the allegations being challenged are so unrelated to a plaintiff's claims as to be unworthy of consideration and that their presence in the pleading would be prejudicial to the moving party." *Id.* Defendant's conclusory, threadbare assertions that these allegations are redundant, immaterial, impertinent or scandalous, are not enough to overcome the disfavor with which such motions are treated.

ARGUMENT

This is a straightforward action for public records, highly favored by the Louisiana Supreme Court, as indicated in Plaintiff's Opposition to Defendants' Exceptions and its Memorandum of Law in Support of its Petition for Writ of Mandamus. Defendant asks this Court to strike seven paragraphs of the Petition, alleging in a most conclusory and vague manner that these seven paragraphs meet the requirements of La. Code Civ. Pro. Art. 964 as redundant, immaterial, impertinent or scandalous. Unfortunately, Defendant does not advise the Court of any details which would support his argument. He does not point out which part of any of these seven paragraphs the Court should find either redundant, or immaterial, or impertinent, or scandalous.

It is noteworthy that again Defendant fails to cite any case or statute or legal authority which supports any specific claim in his Motion to Strike as to any specific paragraph. The only cases cited in the memorandum are found in footnote 2 and these cases are either inapplicable or actually help Plaintiff. Defendant cites to *Carr v. Abel*, 64 So.3d 392 (La. App. 5 Cir. 3/29/2011), an inapplicable case which involved allegations of "defamation, malicious prosecution and abuse of process" – none of which apply to a suit for public records or any claim in this action. Defendant then helps Plaintiff by citing *O'Connor v Nelson*, 60 So. 3d 27, 33 (La. App. 5 Cir 1/11/2011) where the Court of Appeal found it was error to strike allegations in the complaint because: "Motions to strike are viewed with disfavor and are infrequently granted ... It is disfavored because striking a portion of a pleading is a drastic remedy, and because it is often sought by the movant simply as a dilatory tactic.... A motion to strike is only proper if it can be shown that the allegations being challenged are so unrelated to a plaintiff's claims as to be unworthy of any consideration and that their presence in the pleading would be prejudicial to the moving party." Likewise, the next case cited by Defendant, *Hazelwood Farm Inc., v Liberty Oil and Gas Corp.*, 790 So.2d 93, 98 (La. App. 3 Cir 6/20/01) helps Plaintiff as that Court also found it was error to grant a motion to strike because, "Motions to strike are viewed with disfavor and are infrequently granted....It is disfavored because striking a portion of a pleading is a drastic remedy, and because it is often sought by the movant simply as a dilatory tactic. A motion to strike is only proper if it can be shown that the allegations being challenged are so unrelated to a plaintiff's claims as to be unworthy of any consideration and that their presence in the pleading would be prejudicial to the moving party." (internal quotations and citations omitted). The final

case *Miller v Currie*, 713 So.2d 497, 502 (La. App. 3 Cir, 4/1/98) also found that it was error to grant a motion to strike, using the same language of disfavor as the other cases cited above.

Nonetheless, Plaintiff will briefly explain the relevance of these paragraphs in general and in particular.

In general, Paragraphs 1-7 of Plaintiff's Petition are relevant and material allegations necessary to support both Plaintiff's contentions as to its reasonable belief that requested records exist, and to support its request for a waiver of fees. Several of these paragraphs contain citations to further support the fact that this request is in the public interest and for a public purpose. These paragraphs explain the context of the allegations and how the categories of records relate to one another. They are also necessary context for allegations occurring later in the complaint, as well as Plaintiff's pre-lawsuit effort to narrow the issues in follow-up correspondence, annexed to the Petition as Exhibit F. (Until this lawsuit, that correspondence remained unanswered.)

First, Defendant objects to the following paragraph:

1. The public records requested in this matter relate to issues of immediate, pressing and significant public concern with local and national dimensions.

In its initial records request, Plaintiff sought,

“...a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of law enforcement response to the pipeline and opposition thereto. Moreover, as our organizations frequently publish material on issues of serious concern to the public, we qualify as representatives of the news media and this request is related to news gathering purposes.”

See Petition at ¶ 15 and Ex. C, annexed thereto.

In follow-up correspondence sent on October 27, 2017, Plaintiff again inquired about the fee waiver as “the request is in the public interest and for a public informational purpose.” *See* Petition, Ex. F. Plaintiff asked that Defendant “please advise whether you are denying our request for a waiver and, if so, on what basis.” *Id.* Defendant never responded.

This allegation was necessary to support Plaintiff's contention that the requested information is in the public interest. Defendant himself has offered corroboration of Plaintiff's assertion that it publishes material on issues of serious concern to the public through his introduction of Exhibit A, annexed to his Motion to Strike, which is a webpage from Plaintiff's website publicizing information about the filing of this public records lawsuit.

Defendant next objects to the following paragraph:

- 2. In 2016, Sheriff Greg Champagne traveled to North Dakota to observe the law enforcement response to protests against the Dakota Access Pipeline (“DAPL”). At the time, he also served as President of the National Sheriffs’ Association. After his trip, Champagne publicly lauded law enforcement and cast the pipeline protestors as violent and “militant.”**

This paragraph is highly relevant and necessary to establish the basis for Plaintiff’s initial request and its belief that responsive public records exist. It contains pure statements of fact with no hyperbole and no unnecessary descriptive adjectives or adverbs. This paragraph is necessary context for allegations occurring later in the complaint concerning Plaintiff’s attempt to avoid litigation and narrow the issues. *See, e.g.*, Petition ¶ 21(a). To date, Plaintiff’s follow-up inquiry has remained unanswered.

Defendant next objects to the following paragraph:

- 3. As revealed in one of the records produced in what Plaintiff reasonably believes is an inadequate agency response, Champagne deployed SCPSO employees to travel to North Dakota under the Emergency Compact Assistance Act. In one instance, the deployment – to the tune of nearly \$36,000 -- was not to assist with countering allegedly violent and militant protestors, but with producing a pro-law enforcement “Know the Truth” video series SCPSO employees apparently created, or helped to create. *See* Email from C. Fong, January 4, 2017, annexed hereto as Exhibit A; Emergency Management Assistance Compact Reimbursement Form, annexed hereto as Exhibit B.**

Once again, this paragraph states facts and is relevant to support Plaintiff’s contention that these records are in the public interest. It is also relevant and necessary to allegations occurring later in the Petition about Plaintiff’s reasonable belief that more records exist, *see* Petition § 21(b), reciting Plaintiff’s correspondence about the likely existence of additional records relating to the trip by Sheriff’s Office employees, including documents submitted to support the reimbursement request, such as receipts, etc. Plaintiff received no response to its follow-up inquiry.

Defendant also objects to the following paragraph:

- 4. Energy Transfer Partners, the company constructing the DAPL, is also pursuing a related pipeline project in Louisiana known as the Bayou Bridge Pipeline, which would span 162 miles between Lake Charles and St. James, through 11 parishes, developed, agricultural and pasture land, swamp land and bottomland hardwood forests, and 700 bodies of water. Bayou Bridge Pipeline, LLC, is a joint venture of Energy Transfer Partners and Phillips 66 Partners.**

As above, this paragraph states facts, with no added descriptors or hyperbole. It is necessary to provide context connecting the trips taken by Sheriff’s Office employees to North Dakota with related developments and the same corporate actor in Louisiana. It provides context and support for allegations occurring later in the complaint concerning Plaintiff’s attempt to narrow the issue and avoid litigating the request. *See* Petition § 21(c). In that follow-up

correspondence seeking records of communications between Defendant or his employees and agents of the relevant companies, Plaintiff asked Defendant to confirm whether a search was conducted and if responsive records were found. Defendant never responded.

Defendant also objects to paragraph 5:

5. The National Sheriffs Association has endorsed the Bayou Bridge Pipeline and has advocated before state agencies in Louisiana considering the project.

As above, this paragraph states pure facts, with no added descriptors or hyperbole. It is necessary to provide context connecting the events in North Dakota with developments in Louisiana and the basis for the records request. Notably, Defendant does not make the argument in his motion to strike that any records that may exist relating to this allegation are not “public records,” for purposes of the public records law if he was acting purely in his capacity as President of the National Sheriff’s Association. Even if he were to make such an argument, that issue has not yet been litigated in this matter and all the facts surrounding such records have not been assessed on the record. And the Louisiana Supreme Court has made it clear that in some circumstances even “email that is ostensibly related only to private matters” will fall within the definition of public records. *See Shane v. Parish of Jefferson*, 209 So. 3d 726 (2015).

Defendant next objects to the following two paragraphs:

- 6. The National Sheriffs’ Association also lists TigerSwan, LLC, a private security company hired by Energy Transfer Partners to provide security services for its projects, as a “Silver Partner” on the association’s website, indicating TigersSwan has made financial contributions to the association. TigerSwan has been the subject of in-depth reporting and public criticism as a result its controversial tactics, including deploying a highly militarized response to civilian protests, with one former military official denouncing such tactics as “extreme by all measures.”**
- 7. TigerSwan was denied a license to operate in North Dakota and subsequently sued by the North Dakota Private Investigative and Security Board (“NDPISB”) for operating there without a license. TigerSwan was subsequently denied a license to operate in Louisiana, a decision it is now appealing.**

Once again these paragraphs state facts that Defendant does not challenge in substance. These paragraphs are necessary to support the contention that the request is in the public interest given local and national reporting about this particular company. They are further necessary to understand the context of allegations occurring later in the complaint. *See* Petition § 21(c) and why Plaintiffs had to bring this action. If Defendant had communications with officials or representatives of this company either in his capacity as Sheriff, or as President of the National Sheriff’s Association, records of those communications could constitute public records. These

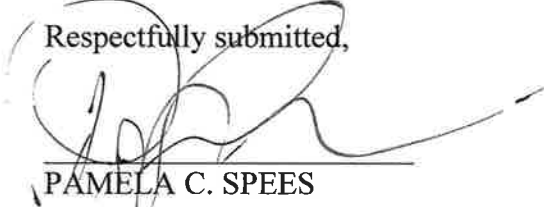
paragraphs, like those above, are far from redundant, immaterial, impertinent or scandalous.

It is also important to note that Plaintiff specifically asked Defendant in that follow-up correspondence whether any records were being withheld and, if so, on what basis. Plaintiff did so in an “effort avoid the expense and inconvenience of litigating this request.” Until this lawsuit, Defendant had not responded.

Conclusion

The allegations targeted by Defendant in this Motion to Strike succinctly state pertinent and material facts necessary to understanding the context of the records requested in this matter and why they are in the public interest and for a public purpose. Defendant’s Motion to Strike is without merit and should be denied.

Respectfully submitted,



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Attorneys for the Plaintiff

TWENTYNINTH JUDICIAL DISTRICT COURT

PARISH OF ST. CHARLES

STATE OF LOUISIANA

**THE CENTER FOR
CONSTITUTIONAL RIGHTS**

Civil Action No. 83297

Plaintiff

v.

Division C

**ST. CHARLES PARISH
SHERIFF'S OFFICE** and
GREG CHAMPAGNE, in his official
capacity as Sheriff of St. Charles Parish
and Custodian of Records,


Defendants.

Filed: _____

Deputy Clerk _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been transmitted to opposing counsel on
this 29th day of December, 2017, by fax and Federal Express.



PAMELA C. SPEES
Attorney for Plaintiff

TWENTY-NINTH JUDICIAL DISTRICT COURT

PARISH OF ST. CHARLES

STATE OF LOUISIANA

THE CENTER FOR
CONSTITUTIONAL RIGHTS

Civil Action No. 83927

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ST. CHARLES PARISH
SHERIFF'S OFFICE and
GREG CHAMPAGNE, in his official
capacity as Sheriff of St. Charles Parish
and Custodian of Records,

Defendants.

Filed: _____

Deputy Clerk _____

**PLAINTIFF'S MEMORANDUM IN REPLY TO DEFENDANT'S OPPOSITION
TO THE PETITION FOR WRIT OF MANDAMUS
UNDER THE PUBLIC RECORDS ACT**

NOW INTO COURT, through undersigned counsel, comes Plaintiff, the Center for Constitutional Rights, who submits the following Memorandum in Reply to Defendant Greg Champagne's Opposition to the Petition for Writ of Mandamus Under the Public Records Act.

SUMMARY OF ARGUMENT

Plaintiff endeavored to avoid bringing this litigation when it sought clarification from Defendant in an effort to discern any basis for withholding additional records Plaintiff reasonably believed existed. Plaintiff did not get an answer from Defendant. Now, only after Plaintiff resorted to bringing this lawsuit, Defendant essentially acknowledges that additional records exist in proffering legal justifications for withholding them. He does so while at the same time accusing Plaintiff of using this forum "to advance petitioners political ideologies" and to "harass" him. Yet, as the Petition and exhibits annexed thereto make clear, Plaintiff, "in an effort to avoid the expense and inconvenience of litigating this request," communicated to Defendant its reasonable belief that responsive records existed and inquired about any basis for withholding such records. *See* Petition at ¶ 23 and Ex. F. Plaintiff's correspondence was met with silence. Defendant's own opposition brief now makes it clear that he believes additional records exist and

that there are important factual and legal questions surrounding this public records request. Though he seeks to deny Plaintiff a hearing, Defendant's own Memorandum in Opposition to the Petition for Writ of Mandamus presents perhaps the strongest argument for a contradictory hearing inasmuch as it surfaces, for the first, time a number of factual questions with important legal implications that demonstrate precisely why such a hearing is necessary.

I. The Defendant's Opposition Memorandum Makes Clear That a Contradictory Hearing is Necessary.

As set out in Plaintiff's Memorandum of Law in Support of its Petition for a Writ of Mandamus and in its Opposition to Defendant's Exceptions, the Louisiana Supreme Court has repeatedly made clear that: 1) the Public Records Act is to be construed liberally in favor of free and unrestricted access to public records; 2) if there is any doubt about whether the records should be made public or not, doubt must be resolved in favor of the public's right to see the records; and 3) that the law was not intended to qualify this right in any way. *See New Orleans Bulldog Society v LSPCA*, 2016-C-1809, 222 So.3d 679, 684 (La. 2017); *Shane v. The Parish of Jefferson*, 2014-2225, p. 9-10 (La. 2015), 209 So.3d 726, 735-36; *In re Matter Under Investigation*, 2007-1853 (La. 2009), 15 So. 3d 972, 989; *Capital City Press v. East Baton Rouge Parish Metropolitan Council*, 96-1979 (La. 1997), 696 So.2d 562, 564; *Title Research Corp. v. Rausch*, 450 So.2d 933, 937 (La. 1984). Moreover, La. R.S. 44:1(A)(2)(a) defines "public record" as including:

All books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state, are "public records", except as otherwise provided in this Chapter or the Constitution of Louisiana.

It is significant in this matter that "not just any answer" to a records request will be sufficient to avoid civil penalties if the response is inadequate and the failure to respond adequately is unreasonable or arbitrary. *Indep. Weekly, LLC v. Pope*, 201 So. 3d 951, 959-961 (La. App. 3 Cir. 2016). As noted above, Plaintiff endeavored in good faith to communicate with

Defendant about the scope of the request and any justifications for withholding responsive records. Petition at ¶ 23 and Ex. F. Defendant failed to acknowledge or respond in any way to Plaintiff's inquiries, which necessitated the filing of the Petition in this matter.

Defendant erroneously relies on *Lewis v. Morrell*, 215 So.3d 737 (La. App. 4 Cir. 2017) in his effort to avoid a hearing in this matter. Yet, the Fourth Circuit in *Lewis* reiterated the presumption that generally, “[a] mandamus action for production of a public record requires a contradictory hearing.” *Id.* at 741 citing *Lens v. Landrieu*, 16-0639, p. 4 (La. App. 4 Cir. 2016), 206 So.3d 1245, 1248. In *Lewis*, the Court held that a hearing was not required when “Defendants cannot be expected to produce initial police reports that are unavailable or cannot be identified.” *Id.* at 746.

In this matter, Defendant has essentially acknowledged that responsive records exist with respect to several categories of Plaintiff's initial request, though he takes issue with whether they constitute “public records.” *See* Def. Memorandum in Opposition to Petition for Writ of Mandamus (“Def. Opp.”) at 2-3. Elsewhere, with regard to Plaintiff's request for records concerning an explosion at Philipps 66 (Category 9), he blames Petitioner for failing to “revise[] its request to make it more specific so that additional searches could be conducted.” Def. Opp. at 6. This claim is disingenuous to make at this point since he never acknowledged or responded to Plaintiff's communication attempting to clarify and narrow the issues and Plaintiff would have had no reason to know Defendant's view that this category of request should be revised. Likewise, as discussed more below, he attempts to distort the terms of the initial request for records relating to Category 2, by inexplicably applying an overly restrictive interpretation of that request. *Id.* at 4.

A. The question of whether records are “public records” is subject for review in a contradictory hearing.

With regard to Plaintiff's request Categories 1 and 7, and possibly Categories 3-6, Defendant appears to take the blanket position that any records that exist would not constitute “public records” as defined under the public records act because he may have been acting in his capacity as President or member of the National Sheriff's Association. However, this is a fact intensive inquiry. The Louisiana Supreme Court has made clear that for purposes of the Public Records Law, “public record” may even encompass email sent on a public employee's government email system, even though the content of the email ostensibly relates only to private matters, when that email has been used in the performance of any work, duty, or function of a

public body, under the authority of state or local law, unless a statutory or constitutional exception applies to prevent public disclosure of the record. *Shane v. The Parish of Jefferson*, 209 So. 3d 726 (La. 2015) (*see also*, Johnson, C.J., concurring, and noting at 747 cases from other jurisdictions holding that “documents having a ‘substantial nexus’ with a government agency’s activities qualify as public records” and opining that “public’s right to discover what public employees are doing during the workday, in the workplace, using resources procured by public funds, is paramount...”).

Defendant traveled to North Dakota to observe the law enforcement response to protests around the Dakota Access Pipeline. Petition at ¶ 2. He then deployed his own employees to travel to North Dakota under Louisiana’s Emergency Management Assistance Contract. Petition at ¶ 3. Defendant provided no records at all in response to the Category 1 request. As Plaintiff pointed out in its correspondence to Defendant of October 27, 2017 – to which Defendant never responded -- “Even if that trip was undertaken in a different capacity or funded by a different entity, there would likely be responsive and relevant Sheriff’s Office records relating to that trip, such as for example, emails or text messages with staff concerning his time away, internal reports, photos, and/or communications concerning the trip and/or related to deployment of other employees to North Dakota.” Petition at ¶ 21(a) and Ex. F.

Moreover, even if the Defendant’s position is that these records are purely private, they may be still be subject to the Public Records Law if related to the performance of any work, duty, or function of a public body. Defendant’s trip to North Dakota was clearly related at some point to the performance of his work or duty as Sheriff in that he authorized the deployment of his employees to North Dakota under the Emergency Management Assistance Compact. Def. Opp. at 4.

B. Defendant misstates the scope of the initial request for records relating to Sheriff’s Office employees’ travel to North Dakota.

Defendant suggests that he fully complied with the request in Category 2 which concerns travel by Sheriff’s Office employees to North Dakota, by taking a very narrow interpretation of the thrust of Plaintiff’s request. However, the records produced only consist of documents relating to the department’s submission of reimbursement for expenses from North Dakota under the Emergency Managements Assistance Compact. They do not include supporting documentation for those reimbursements, such as receipts or invoices, or other documents relating to the employee’s travel. The initial request clearly sought copies of “any and all public

records... relating to..." "2. Any travel by St. Charles Parish Sheriff's Office... employees to North Dakota... ."

In *New Orleans Bulldog Society v LSPCA*, 222 So.3d at 687, the Court reiterated that the Public Records Law was enacted to avoid "arbitrary restriction on the public's constitutional right to see." (internal quotations omitted). Even under Defendant's restrictive reading, the response would not be complete. *See also, Treadway v. Jones*, 583 So.2d 119, 121 (La. App. 4 Cir. 1990) ("The Public Records Law must be liberally interpreted to enlarge rather than restrict the public's access to public records.")

II. Defendant's Memorandum Indicates Eight Categories of Records He is Refusing to Make Public.

It is clear from his own pleadings that there are documents which exist which the Defendant is refusing to make public. These can be broken down into eight categories.

1. Defendant Refuses to Provide Records Unless He Decides Records Are Relative to Sheriff's Business Transactions.

On page 3 of Defendant's Opposition to Petition, Defendant makes the following statement: "Many documents requested are not public records of the Sheriff of St. Charles Parish." Defendant goes on to cite a 2009 Opinion from the Attorney General which he uses to advise the court that unless there are records which are "relative to any business transaction required by law," he is not obligated to disclose those records.

The Defendant does not say these records do not exist. He says they are not public records so he does not have to disclose them.

Defendant thus asks this Court to allow him alone to decide what records are public and because the Sheriff has decided any records other than business transaction records are not public, he can withhold those records from the public.

As discussed above, and as bears repeating, the Louisiana Supreme Court ruled on this on May 12, 2017: "This Court has consistently held that the Public Records Law should be construed liberally in favor of free and unrestricted access to public documents. ... [W]henver there is doubt as to whether the public has the right of access to certain records, the doubt must be resolved in favor of the public's right to see; to allow otherwise would be an improper and arbitrary restriction on the public's constitutional rights." *New Orleans Bulldog Society v LSPCA*, 222 So. 3d at 684 (further noting at p. 687 that the Public Records Law is purposefully

broad and “all inclusive”).

In contravention of this direction from the Supreme Court the Sheriff offers only an older Attorney General Opinion. Such opinions, while having some persuasive authority, are advisory only and not binding on Courts, particularly where there is a decision on point like the one above. *See Orleans Parish School Board v Quatrevaux*, 154 So.3d 612, 618 (La. App. 4 Cir 11/17/14) (“Although Louisiana Attorney General Opinions are merely advisory and not binding, the courts of this State have recognized their persuasive authority... particularly when no cases on point exist”).

Likewise the legislature has made it clear that the only exceptions are statutory. In particular,

Exceptions A. The legislature recognizes that it is essential to the operation of a democratic government that the people be made aware of all exceptions, exemptions, and limitations to the laws pertaining to public records. In order to foster the people's awareness, the legislature declares that all exceptions, exemptions, and limitations to the laws pertaining to public records shall be provided for in this Chapter or the Constitution of Louisiana. Any exception, exemption, and limitation to the laws pertaining to public records not provided for in this Chapter or in the Constitution of Louisiana shall have no effect.

La. R.S. 44:4.1.

Likewise, La. R.S. 44: 31 (B) (3) is clear. “The burden of proving that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian.”

Therefore, this Court should order the Defendant to produce all records in accordance with La. R.S. 44:1(A)(2)(a) for each request.

Given the previous qualifiers asserted by the Defendant on what he considers public records, he must be ordered to either produce all the records, or state under oath that there are no records at all.

2. Defendant Refuses to Provide All Records Connected with His Trip to North Dakota as Described on his Official Facebook Page

In response to Petitioner’s public records request for “Sheriff Greg Champagne’s trip to North Dakota on October 2016 to observe the law enforcement response to the protests against the Dakota Access Pipeline Project as described here (See Attachment 1) and on his Facebook page here (Attachment 2)” the Defendant asserts that he is not the custodian of the records of the National Sheriff’s Association and that “There are no public records of the Sheriff of St. Charles Parish in response to this request.” Def. Opp. at 3.

This request is directed to Sheriff Champagne, not to the National Sheriff’s Association.

His records, comprehensively defined by the Louisiana Public Records Law, must be produced. He cannot be allowed to avoid the law by claiming someone else has some records. The law mandates that he produce any records he or the St. Charles Parish Sheriff office has on his travel.

Petitioner's correspondence of October 27, 2017, to which the Defendant did not respond, asked specifically:

"We note there were no records provided relating to this category. It does not seem reasonable that there would be no public records relating to Sheriff Champagne's October 2016 trip to North Dakota. Even if that trip was undertaken in a different capacity or funded by a different entity, there would likely be responsive and relevant Sheriff's Office records relating to that trip, such as, for example, emails or text messages with staff concerning his time away, internal reports, photos, and/or communications concerning the trip and/or related to deployment of other employees to North Dakota. Please advise if a search was conducted for records responsive to this request and, if so, what that process entailed, including what was searched and how. If a search was not conducted for these records, please advise whether you will undertake a search and an estimate as to timing of a response."

See Petition, Ex. F.

The Sheriff is legally obligated to produce all records responding to this request. As noted above, "public records" includes,

All books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state, are "public records", except as otherwise provided in this Chapter or the Constitution of Louisiana."

La. R.S. 44:1(A)(2)(a).

This Court must order the Sheriff to produce all records in this matter.

Given the previous qualifiers asserted by the Sheriff on what he considers public records, the Sheriff must be ordered to either produce all the records, or state under oath that there are no records at all.

3. Defendant Refuses to Provide All Records Connected with Travel to North Dakota by any St. Charles Parish Sheriff Office employees

Defendant has provided some documentation about the trip in question. However, the Sheriff has not responded with all public records requested.

As noted in petitioner's public records request of October 27, 2017:

"The bulk of documents provided in response to this request consisted of bookkeeping records detailing expenses for trips to North Dakota by Sheriff's Office employees and

reimbursement invoices through the Emergency Management Assistance Compact process. It does not seem reasonable that there would be no other responsive records relating to this category of records sought, such as emails, text messages, reports, photos, videos, receipts, etc. In particular, we note that an email dated January 4, 2017, from Cecily Fong, attached hereto, indicates that Sheriff's Office employees Capt. Patrick Yoes and Robert Riddick were requested to return to North Dakota to "assist with training so we are able to continue the 'Know the Truth' video series they created." It seems highly likely there would be additional records relating to this request category, such as, but not limited to, training materials, emails, text messages, or other forms of correspondence with counterparts in North Dakota. Likewise, if St. Charles Parish Sheriff's Office employees recorded video or audio, raw or edited, or took photographs, or obtained copies of such while deployed in North Dakota or as part of the assistance they provided to enable local law enforcement to continue the video series, those would constitute public records for purposes of this request as well. Please advise whether you will undertake a search for additional records related to this category of records and, if so, an estimate as to timing of a response."

Petition, ¶ 21(b).

Defendant asserts that he has produced all public records that fit the request pertaining to "travel" while the record indicates he has not. Rather he ignores the October 27, 2017 and has chosen to narrow the scope of the request himself.

This Court must order the Defendant to fully respond to this request.

4. Defendant Says There Are No Public Records of Communications between Himself or Anyone in His Office with Anyone Connected with Energy Transfer Partners.

The Defendant responds in his memorandum by saying "No public records exist that would fall within this category."

Given the previous qualifiers asserted by the Defendant on what he considers public records, he must be ordered to either produce all the records, or state under oath that there are no records at all.

5. Defendant Says There Are No Public Records of Communications between Himself or Anyone in His Office with Anyone Connected with Dakota Access, LLC.

The Defendant responds by saying "No public records exist that would fall within this category."

Given the previous qualifiers asserted by the Defendant on what he considers public records, he must be ordered to either produce all the records, or state under oath that there are no records at all.

6. Defendant Says There Are No Public Records of Communications between Himself or Anyone in His Office with Anyone Connected with Tiger Swan LLC or James Reese or James "Spider" Marks of Tiger Swan.

The Defendant responds by saying "No public records exist that would fall within this category."

Given the previous qualifiers asserted by Defendant on what he considers public records, the Sheriff must be ordered to either produce all the records, or state under oath that there are no records at all.

7. Defendant Says There Are No Public Records of Communications between Himself or Anyone in His Office with Anyone Connected with Bayou Bridge Pipeline, including communications with federal, state, county, parish, city or town officials and/or individuals in the private sector.

The Defendant responds by saying “No public records exist that would fall within this category.” Given the previous qualifiers asserted by the Sheriff on what he considers public records, he must be ordered to either produce all the records, or state under oath that there are no records at all.

8. Defendant Says There Are No Public Records of Communications, Notes, Memoranda or any other Documents associated with the presentation by the National Sheriffs Association at a hearing on the proposed Bayou Bridge Pipeline convened by the Louisiana Department of Environmental Quality in February, 2017.

The Defendant responds by saying “Documents, even if they would exist, are not public records of the St. Charles Parish Sheriff.”

Given the previous qualifiers asserted by the Sheriff on what he considers public records, the Sheriff must be ordered to either produce all the records, or state under oath that there are no records at all.

III. Plaintiff should be awarded Attorney’s Fees and Costs of Bringing This Litigation.

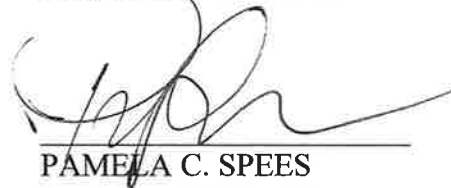
As noted above, Plaintiff sought to avoid bringing this litigation but Defendant refused to engage with Plaintiff and only now offers some semblance of responses to inquiries Plaintiff made more than two months ago. While Defendant did make an initial and very limited response, the law is clear that “not just any answer” to a records request will be sufficient to avoid civil penalties if the response is inadequate and the failure to respond adequately is unreasonable or arbitrary. *Indep. Weekly, LLC v. Pope*, 201 So. 3d 951, 959-961 (La. App. 3 Cir. 2016).

Defendant’s own brief makes clear that there are significant open issues relating to Plaintiff’s request; and Plaintiff should be awarded, at a minimum, fees and costs incurred in having to bring this litigation.

Conclusion

As set out above and as demonstrated in Defendant's own Memorandum in Opposition to Plaintiff's Petition, the issues relating to this public records request warrant a contradictory hearing.

Respectfully submitted,



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TWENTYNINTH JUDICIAL DISTRICT COURT

PARISH OF ST. CHARLES

STATE OF LOUISIANA

**THE CENTER FOR
CONSTITUTIONAL RIGHTS**

Civil Action No. 83927

Plaintiff

v.

Division "C"

**ST. CHARLES PARISH
SHERIFF'S OFFICE** and
GREG CHAMPAGNE, in his official
capacity as Sheriff of St. Charles Parish
and Custodian of Records,

Defendants.

Filed: _____

Deputy Clerk _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been transmitted to opposing counsel on
this 29th day of December, 2017, by fax and Federal Express.



PAMELA C. SPEES
Attorney for Plaintiff