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**TELECOPY COVER LETTER**

DATE: August 3, 2018

FAX NO: (212)614-6431

TO: Pamela C. Spees

FROM: Steven M. Mauterer

CLIENT: *The Center for Constitutional Rights v. St. Charles Parish Sheriff's Office and Greg Champagne, in his official capacity as Sheriff of St. Charles Parish, Custodian of Records*  
29<sup>th</sup> JDC, Docket No. 83,927, Div. "C"

NUMBER OF PAGES (16) INCLUDING THIS COVER LETTER.

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August 3, 2018

**Via Facsimile (212) 614-6431**  
**and U.S. Mail**

Pamela C. Spees  
666 Broadway, 7<sup>th</sup> Floor  
New York, NY 10012

**Via Facsimile (504) 861-5440 and**  
**U.S. Mail**

William P. Quigley  
7214 St. Charles Avenue  
New Orleans, La. 70118

**Re: The Center for Constitutional Rights v. St. Charles Parish Sheriff's  
Office and Greg Champagne, in his official capacity as Sheriff of St. Charles  
Parish, Custodian of Records  
29<sup>th</sup> JDC, Docket No. 83,927, Div. "C"  
Our File No. BB17-091**

Dear Counselors:

Enclosed herewith, please find Sheriff Champagne's Appellee Brief filed with the Fifth Circuit today.

With best regards, I remain,

Sincerely,



Steven M. Mauterer

SMM

Enclosure

cc: Sheriff Champagne  
Maurice Bostick

FIFTH CIRCUIT COURT OF APPEAL  
STATE OF LOUISIANA

FILE FOR RECORD  
2018 AUG -3 AM 8:40  
DEPUTY CLERK  
FIFTH CIRCUIT COURT OF APPEALS  
STATE OF LOUISIANA

**DOCKET NO. 2018-CA-274**

THE CENTER FOR CONSTITUTIONAL RIGHTS  
Plaintiff/Appellant

VERSUS

SHERIFF GREG CHAMPAGNE, IN HIS OFFICIAL CAPACITY  
AS SHERIFF OF ST. CHARLES PARISH  
AND CUSTODIAN OF RECORDS  
Defendant/Appellee

---

*Original Appellee's Brief of  
Sheriff Greg Champagne  
as it Pertains to the January 8, 2018 Judgment,  
of the Honorable Emile R. St. Pierre, Presiding in the  
29<sup>th</sup> Judicial District Court for the Parish of St. Charles,  
Docket No. 83,927, Division "C"*

---

CIVIL PROCEEDING

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Respectfully submitted,

**BEEVERS & BEEVERS, L.L.P.**

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### STATEMENT OF THE CASE

On September 18, 2017, the Center for Constitutional Rights forwarded to the Custodian of Records of the St. Charles Parish Sheriff's Office a request pursuant to the Louisiana Public Records Act §44:1, *et seq.* (P-1; Rec. 21-23) The request included specifically defined terms. "Records" was specifically defined as "all records or communications preserved in electronic, including metadata, or written form, such as correspondences, emails, text messages, messages through social media accounts including Facebook and Twitter, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analysis, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, talking points, technical manuals, technical specifications, training manuals, studies, or other record of any kind." "Communications" was specifically defined as "the transmission of information, whether facts, ideas, inquires or otherwise."

On September 19, 2017, the Custodian of Records, through Captain Maurice Bostick, Esq. transmitted a formal acknowledgment and advised that the Sheriff's Office was undertaking a search of its records. (P-2; Rec. 39) Prior to receiving payment authorized by statute, on October 17, 2017, the Sheriff's Office produced an invoice and certified copies of documents it was able to identify as responsive to the request as presented. (P-3; Rec. 41) On October 27, 2017, the Center for Constitutional Rights sent a letter, without payment for the previously produced records, arguing with Captain Bostick over what it "believed" must exist and what it concluded "does not seem reasonable." (P-4; Rec. 43-45) On December 13, 2017, a Petition for Writ of Mandamus was filed by the Center for Constitutional Rights, which was amended on December 18, 2017.

Addressing the Exceptions and Motions filed by Greg Champagne as Sheriff of

St. Charles Parish, the Trial Court granted the Exception of No Cause of Action, denied the Exception of Lack of Procedural Capacity, and granted the Sheriff's Motion to Strike. The Trial Court then took up the trial on the Petition for Mandamus. Therein, in what the Trial Court correctly described as a deposition and not a mandamus hearing compelling production of existing public records, the Trial Court heard testimony and at the conclusion of the Plaintiff's case, correctly granted a Motion for Involuntary Dismissal.

The Center for Constitutional Rights appeals, asserting that "receipts" not requested in their public records request exist and that the Trial Court erred in finding that Greg Champagne as Sheriff and Custodian of Records for the St. Charles Parish Sheriff's Office substantially complied with the Louisiana Public Records Act.

#### ARGUMENT

#### **I. The Trial Court Correctly Ruled That St. Charles Parish Sheriff's Records Actually Requested In The September 18, 2017 Public Records Request Were Produced.**

##### **A. Petitioner Never Denied Right to Public Records**

Appellants' appeal fails for several reasons. The first, and most fundamental, is that Appellant was never denied the right to inspect, copy, reproduce, or obtain reproduction of public records of the St. Charles Parish Sheriff. La. R.S. 44:35 Moreover, as Sheriff Champagne is not the custodian of records for the National Sheriff's Association ("NSA") or Morton County Sheriff's Office<sup>1</sup>, he was under no obligation, nor did he possess any legal authority, to produce copies of those entities

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<sup>1</sup> Captain Yoes testified that once he arrived in North Dakota he was deputized as part of the Morton County Sheriff's Office and acted in that capacity. (Rec. 253:16-21 and 256:3-13) Captain Yoes testified that any records he may have was "as a deputy of the Morton County Sheriff's Office" and "were turned over to the Morton County Sheriff's Office." (Rec. 255:20-23) Captain Yoes also testified that any copies he may or may not have were not for the purpose of the St. Charles Parish Sheriff's Office. (Rec. 257:25-32, 258:1) Any video is in the possession of its owner, the Morton County Sheriff's Office. (Rec. 259:5-7)

records, especially considering the NSA's private, nonprofit status. As the Custodian did not withhold public records of the St. Charles Parish Sheriff's Office responsive to the request, there was no question raised as to whether any particular document was a public record. Under these facts, Sheriff Champagne was under no statutory obligation to notify Appellant in writing of his determination, exemptions claimed, or reasons therefor. La. R.S. 44:32D

### **B. The Custodian Is Not Required To Guess**

The Public Records Act, and supporting jurisprudence, require specificity in the request as the Custodian of Records is not required to guess as to the nature and scope of the request in order to determine if documents exist.

"The custodian of public records cannot be expected to produce records that it cannot identify. To the contrary, the custodian's statutory duty is "to provide immediate access to records that are available." *All. for Affordable Energy v. Frick* , 96-1763, p. 7 (La. App. 4 Cir. 5/28/97), 695 So.2d 1126, 1132 (emphasis added). (As Dr. Rouse was unable to identify records pertaining to Mr. Hatcher's request, we find no abuse of the trial court's discretion in denying the request for a Writ and dismissing it.) As the Louisiana Supreme Court once found, "[u]nder these circumstances [of this case], a mandamus would not serve a useful purpose and should not issue." *Reynolds v. Louisiana Highway Comm'n* , 163 La. 125, 111 So. 622, 624 (La. 1927). *Hatcher v. Rouse*, 16-0666 (La. App. 4 Cir. 2/1/17), 211 So.3d 431

This discussion is important because the Custodian of Records relied upon the September 18, 2017 public records request and the defined terms contained therein. At the deposition style hearing, Appellant sought to enlarge their request beyond what it had requested and now complains as error that it was not provided documents they claim the Custodian possesses. The Trial Court patiently sat through a tortuous inquisition as to each request and Sheriff Champagne presents here why the Trial Court was correct.



Appellant requested public records related to:

- 1) Sheriff Greg Champagne's trip to North Dakota in 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 (See Attachment 2).

Sheriff Greg Champagne's trip to North Dakota was in connection with his role as President of the National Sheriff's Association. He is not the Custodian of Records of the National Sheriff's Association and is not obligated and/or authorized to distribute the records of a private, nonprofit corporation. There are no public records of the Sheriff of St. Charles Parish in response to this request. The Sheriff testified: "[t]o my knowledge there are no records about that. That had anything to do with public business of St. Charles Parish<sup>2</sup>." Out of the abundance of caution and to make sure that no public records exist, Captain Bostick testified that he had the IT department run an unlimited search to see if there were any communications in the computer system regarding the North Dakota Pipeline Deployment<sup>3</sup>. While petitioner speculates and seeks to impermissibly enlarge the scope of its original request within the mandamus, the Custodian is not obligated to produce what does not exist or is not one of its public records.

- 2) Any travel by St. Charles Parish Sheriffs Office (SCSO) employees to North Dakota in connection with the Dakota Access Pipeline and/or protests against it.

The request, which does not include "receipts" within the definition of "records" as written, or specifically request receipts, only sought public records regarding "travel." Those documents were produced. (P-3) In its petition(s), the mandamus hearing, and on appeal, Appellant seeks to expand the scope of the request to which the Custodian of Records responded (now wanting "receipts and other supporting

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<sup>2</sup> Rec. 207:31; 208:1-3

<sup>3</sup> Rec. 228:32, 229:1-3 and 237:31-32, 238:1-3

documentation<sup>4</sup>) and makes speculative and erroneous assumptions. Without being forced to guess as to what was intended by the term “travel,” the Custodian produced all public records that fit its understanding of “travel.”

- 3) Communications between Sheriff Greg Champagne and/or other employees or agents of the SCSO and officials, employees, or agents of Energy Transfer Partners (ETP).

“Communications” was specifically defined by Appellant as “the transmission of information, whether facts, ideas, inquires or otherwise.” While the provided definition is quite vague and subject to multiple interpretations for which the Custodian is not required to guess as to which one is the intended meaning, Sheriff Champagne confirmed, under oath, that no responsive documents were produced because he had no knowledge of communications with anyone at Energy Transfer Partners<sup>5</sup>. No public records were located that would fall within this category.

- 4) Communications between Sheriff Greg Champagne and/or other employees or agents of the SCSO and officials, employees, or agents of Dakota Access, LLC.

As stated *supra* , “Communications” was specifically defined by Appellant. While the provided definition is quite vague and subject to multiple interpretations for which the Custodian is not required to guess as to which one is the intended meaning, Sheriff Champagne confirmed, under oath, that no responsive documents were produced because he had no knowledge of communications with anyone at North Dakota Access Pipeline, LLC<sup>6</sup>. No public records were located that would fall within this category.

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<sup>4</sup> Appellant Brief at 4

<sup>5</sup> Rec. 194:17-18

<sup>6</sup> Rec. 196:19

- 5) Communications between Sheriff Greg Champagne and/or other employees or agents of the SCSO and officials, employees or agents of TigerSwan, LLC, including but not limited to communications with James Reese, TigerSwan founder and chairman, and James "Spider" Marks, chair of the TigerSwan advisory board.

While the provided definition is quite vague and subject to multiple interpretations for which the Custodian is not required to guess as to which one is the intended meaning, Sheriff Champagne confirmed, under oath, that no responsive documents were produced because he had no knowledge of communications with anyone at TigerSwan<sup>7</sup>. No public records were located that would fall within this category.

- 6) All communications between Sheriff Greg Champagne and/or other employees or agents of SCSO, concerning the Dakota Access Pipeline and/or the proposed Bayou Bridge Pipeline, including but not limited to communications with federal, state, county, parish, city or town officials and/or individuals in the private sector.

Again, "Communications" was specifically defined by Appellant. While the provided definition is quite vague and subject to multiple interpretations for which the Custodian is not required to guess as to which one is the intended meaning, Sheriff Champagne confirmed, under oath, that no responsive documents were produced because he had no knowledge of communications between Sheriff's Office employees regarding Dakota Access Pipeline.<sup>8</sup> Moreover, Captain Bostick testified that he had the IT department run an unlimited search to see if there were any communications in the computer system regarding the North Dakota Pipeline Deployment.<sup>9</sup> No public records were located that would fall within this category

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<sup>7</sup> Rec. 196:22-25

<sup>8</sup> Rec. 196:26-29, 214:9-14

<sup>9</sup> Rec. 228:32, 229:1-3 and 237:31-32, 238:1-3

- 7) All communications, notes, memoranda and other documents associated with the presentation of the National Sheriffs Association at a hearing on the proposed Bayou Bridge Pipeline convened by the Louisiana Department of Environmental Quality in February 2017.

Again, the provided definition of “Communications” is quite vague and subject to multiple interpretations for which the Custodian is not required to guess as to which one is the intended meaning. However, Appellant clearly seeks documents that are the records of the NSA, a private, nonprofit company for which the Sheriff is not the Custodian of Records nor authorized to distribute its private records. Sheriff Champagne confirmed “St. Charles Parish Sheriff’s Office not me in my capacity as Sheriff here has not been involved with the Bayou Bridge Pipeline, sending or receiving communications. The National Sheriff’s Association probably has some . . . <sup>10</sup>” Captain Bostick also confirmed that he does not retain and is not in charge of NSA records<sup>11</sup>.

- 8) All records and communications relating to the SCSO’s implementation of the Emergency Management Assistance Compact (EMAC) signed by Governor John Bel Edwards on June 19, 2016 and activities undertaken by the SCSO in pursuant to the EMAC.

Again, Appellant defined “records” and “communications” in its September 18, 2017 request. The request did not specifically request “receipts.” The request sought records regarding the “implementation” of the EMAC. In that regard, Captain Bostick testified that the entire EMAC<sup>12</sup>, which was part of the sixty pages that he produced, along with e-mails between his predecessor and the finance department regarding the EMAC, were produced<sup>13</sup>.

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<sup>10</sup> Rec. 218:25-30

<sup>11</sup> Rec. 238:26-30

<sup>12</sup> Rec. 240:5-8

<sup>13</sup> Rec. 230:28-32, 231:1

- 9) Any and all communications concerning the Phillips 66 pipeline explosion in Paradis, Louisiana, in February 2017.

Louisiana law requires the Louisiana State Police to provide emergency response to chemical emergencies at industrial sites or sites related to transportation throughout the state and provides the State Police with statutory authority as the on-scene coordinator for all hazardous material incidents in Louisiana. The Louisiana State Police is the custodian of records regarding public records regarding this explosion. The Custodian of Records of St. Charles Parish Sheriff's Office obtained the only communication it could locate, a copy of a Facebook posting from Captain Yoes, Commander of Special Services Division who is responsible for public information. Appellant does not raise any issue in response to the documents produced by the Custodian of Records in its appeal.

**II. Trial Court Not Required to Order Production of "Receipts and Other Documentation" Not Specifically Requested in September 18, 2017 Request Nor Is Trial Court Required to Order a Further Search.**

Pursuant to La. R.S. 44:35, the court can (1) enjoin the custodian from withholding records or (2) issue a writ of mandamus ordering the production of any records improperly withheld from the person seeking disclosure.

Sheriff Champagne did not withhold records so the court had nothing to enjoin. Likewise, there was nothing withheld which could be ordered produced via writ of mandamus. There is no authority provided by statute for the Trial Court in a mandamus proceeding to order a Custodian to conduct a further search to look for documents not specifically requested.

**III. Public Records Not Withheld, Greg Champagne Did Not Act Arbitrary and Capriciously**

The test for determining whether an action is arbitrary and capricious is whether it was taken "without reason." *Aswell v. Division fo Admins, State*, 2015-1851 (La.

App. 1 Cir. 6/3/16), 196 So.3d 90, writ denied 2016-1263 (La. 11/7/16), 209 So.3d 102. Here, the Custodian of Records is not obligated and/or authorized to distribute records of the National Sheriff's Association and/or the Morton County Sheriff's Office. As it pertains to the specific request, no public records of St. Charles Parish Sheriff's Office<sup>14</sup> were withheld and all responsive documents that were located were produced. The fact that Appellant did not make a specific request and wants to force the Custodian to guess as to what it sought does not offend the "without reason" test.

Not only was the Trial Court correct in finding that the Sheriff had not acted arbitrarily or capriciously, the Trial Court was correct in casting the Plaintiff with all costs.

#### CONCLUSION

For the foregoing reasons, the Trial Court was correct in finding that Greg Champagne, as Custodian of Records for the St. Charles Parish Sheriff's Office, did not violate the Louisiana Public Records law and complied with the September 18, 2017 request by the Center for Constitutional Rights. The Trial Court's decision should be affirmed and the plaintiff should be cast with all costs of this appeal.

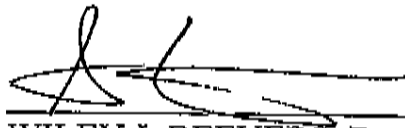
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<sup>14</sup> The St. Charles Parish Council was provided Louisiana Attorney General Opinion in 2009, (La. AG 08-0312, 2/5/09) wherein the Louisiana Attorney General opined:

We do not believe that the Legislature meant to include everything (e.g. memo, work papers) which any public official may happen to reduce to writing. It is our opinion that the statute, R.S. 44:1, included only those writings **which are used in the performance of the functions of the public body.** (Emphasis Added.)

The Attorney General found its opinion consistent with *Bartels v. Rouseel*, 303 So.2d 833 (La. App. 1 Cir. 1974) which held "all records, writing, memoranda and papers, etc., *relative to any business transaction required by law* is a public document open to inspection.

Respectfully submitted,  
**BEEVERS & BEEVERS, L.L.P.**



---

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*Attorneys for Greg Champagne, in His Official  
Capacity as Sheriff of St. Charles Parish and  
Custodian of Records*

VERIFICATION AND CERTIFICATE OF SERVICE

STATE OF LOUISIANA

PARISH OF JEFFERSON

BEFORE ME, the undersigned authority, personally came and appeared:

**Steven M. Mauterer, LSBA #26682**

\who having been first duly sworn, deposed and stated that:

- (1) He is the counsel for *Sheriff Greg Champagne, in His Official Capacity as Sheriff of St. Charles Parish and Custodian of Records;*
- (2) That all of the allegations contained in the foregoing brief are true and correct to the best of his knowledge, information, and belief;
- (3) I hereby certify that all parties in these proceedings identified below will be served via email, U.S. Mail, facsimile, and/or hand delivery, with this application, on the 3<sup>rd</sup> day of AUGUST, 2018.

The Honorable Emile R. St. Pierre  
29<sup>th</sup> Judicial District Court  
15045 River Road  
P.O. Box 424  
Hahnville, LA 70057

Maurice E. Bostick  
St. Charles Parish Sheriff's Office  
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Counsel for The Center for  
Constitutional Rights

  
\_\_\_\_\_  
STEVEN M. MAUTERER

Sworn to and subscribed before me  
this 3<sup>rd</sup> day of August, 2018.

  
\_\_\_\_\_  
NOTARY PUBLIC

TOBIE LYNN TRANCHINA  
Notary Public # 152384, LA Bar # 37900  
210 Huey P. Long Ave., Gretna LA  
Parish of Jefferson, State of Louisiana  
My Commission is issued for life