

**FIFTH CIRCUIT COURT OF APPEAL  
STATE OF LOUISIANA**

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**2018 CA 274**

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**THE CENTER FOR CONSTITUTIONAL RIGHTS**

**PLAINTIFF / APPELLANT**

**VS.**

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

**DEFENDANT / APPELLEE**

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**APPEAL FROM THE 29<sup>TH</sup> JUDICIAL DISTRICT COURT  
PARISH OF ST. CHARLES, CIVIL CASE NO. 83,927  
THE HONORABLE EMILE R. ST. PIERRE, DIV. C**

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**CIVIL PROCEEDING**

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## INTRODUCTION

In his brief in opposition to this appeal, Defendant-Appellee Sheriff Greg Champagne (“Appellee”) completely ignores what the record clearly shows – that public records responsive to the request in this matter existed and were withheld by the custodian without any legal basis. Appellee also disregards the fact that the Public Records Law defines what constitutes “public records” and what is required of custodians, and, not least, that the constitutional right of access to public records “must be construed liberally in favor of free and unrestricted access to the records, and that access can be denied only when a law, specifically and unequivocally, provides otherwise.” *In re Matter Under Investigation*, 2007-1853 (La. 7/1/09), 15 So. 3d 972, 989 (citing *Capital City Press v. East Baton Rouge Parish Metropolitan Council*, 96–1979, p. 4 (La.7/1/97), 696 So.2d 562, 564).

### **I. THE RECORD IS CLEAR THAT THE CUSTODIAN WITHHELD RESPONSIVE PUBLIC RECORDS WITHOUT A LEGAL BASIS.**

Appellee asserts in his brief that Plaintiff -Appellant Center for Constitutional Rights “was never denied the right to inspect, copy, reproduce, or obtain reproduction of public records of the St. Charles Parish Sheriff.” Appellee Br. at 2. This is directly contradicted by the record below, which includes testimony of the records custodian that responsive public records existed, were not produced, and that there was no legal justification provided for withholding them.

In particular, Captain Maurice Bostick, records custodian, testified that with regard to travel to North Dakota by sheriff’s office employees, which was the subject of the Request No. 2 and also encompassed by Request No. 8, he was “sure” there were receipts relating to that travel. R. 242:16-27; *see also*, Appellant Br. at 8-9. Captain Patrick Yoes also testified that he turned over receipts related to his travel to North Dakota. R. 252:13-26. Yet, Bostick admitted that he did not

produce those documents, nor he did provide any legal basis for withholding them.

R. 242:16-27; *see also* Appellant’s Opening Br. at 8-9.

Appellee attempts to distract from these facts by suggesting that Plaintiff’s request was vague and that the custodian would have been “forced to guess as to what was intended by the term ‘travel’.” Appellee Br. at 5. Appellee also suggests that Plaintiff included a “definition” of “records” in the request that did not include receipts. *Id* at 4. However, the Public Records Law itself defines what is meant by “public records” and clearly includes receipts in that definition as documents or writings that “concern[] the *receipt or payment of any money received or paid* by or under the authority of the constitution or the laws of this state...” La. R.S. 44:1(A)(2)(a) (emphasis added); *see also*, Appellant Opening Br. at 14-16.

Receipts are by their very nature documents, or “writings,” concerning the “receipt or payment” of “money received or paid.” The expenses were paid out by or under the authority of the constitution or the laws of the state of Louisiana in that the travel was authorized by Sheriff Champagne, R. 208:26-210:7, acting pursuant to his constitutionally delegated authority, and also pursuant to the Emergency Management Assistance Compact, a state law. *See* La. Const. art. V §27 and La. R.S. 29:733, respectively.

Throughout his brief, Appellee asserts that Plaintiff included “definitions” of the terms “records” and “communications” that the records custodian relied upon in responding to the request. *See, e.g.*, Appellee Br. at 4, 8 (suggesting that receipts were not specifically requested). However, given that the Public Records Law itself *defines* “public records” and encompasses receipts, Plaintiff noted that the request for “copies of any and all public records” included but was “not limited to” a non-exhaustive, illustrative list of types and formats of documents. R. Ex. P-1; R. 64. When receipts were not produced, Plaintiff even followed up with correspondence which specifically inquired about them in an attempt to avoid

litigating the request. R. 86; Appellant's Opening Br. at 9. The custodian never responded to Plaintiff's follow-up inquiry. *Id.*

Once it became clear during the testimony that receipts related to public employees' travel in fact existed and were not produced in response to a request for documents relating to that travel, the only ground upon which the District Court's decision not to order their production could be affirmed would be if such receipts were somehow not considered public records – i.e. if a “law specifically and unequivocally, provides otherwise.” Yet, Appellee never attempted to offer a legal basis for withholding the records, either before or during the hearing on the matter; and the District Court offered no legal basis for exempting them when it simply marked the request “as satisfied.” R. 243:27-29; *See also* 261:31-262:10.

Appellee's attempt to find cover in *Hatcher v. Rouse* fails. In fact, *Hatcher* is helpful to Plaintiff in that it demonstrates by comparison how faulty and inadequate Appellee's response was here. In *Hatcher*, the requestor submitted a request for records relating to a file number that did not exist at the Coroner's Office. *Hatcher v. Rouse*, 16-0666 (La. App. 4 Cir. 2/1/17), 211 So.3d 431. The custodian sought clarification from the requestor and, based on the information provided in response, notified him that the office was not in possession of records relating to a file with the number identified. *Id.* The custodian advised the requestor to seek the records from other agencies the requestor had referenced in his correspondence. In that situation, the court held that the custodian could not be expected to produce records it could not identify. *Id.* at 437.

Here, a) Plaintiff's request clearly identified the records sought and b) Plaintiff even attempted to confirm whether the records existed and never received a response from the custodian. Only after Plaintiff brought this action did the custodian acknowledge that the records existed, and that he declined to produce them without any legal justification for withholding them.

## **II. VIDEO RECORDINGS MADE BY SHERIFF'S OFFICE PERSONNEL ARE PUBLIC RECORDS.**

Appellee suggests that because Captain Yoes was deputized by the Morton County Sheriff's Office when he traveled to North Dakota and provided that office with copies of video files, any copies of the files that may be in the custody and control of St. Charles Parish Sheriff's Office are not public records. Appellee Br. at 2, n. 1. He offers no authority for this statement.

Sheriff Champagne authorized Yoes and other employees of the sheriff's office to travel to North Dakota and provide assistance to the Morton County Sheriff's Office. R. 208:26-209:19. He did so in the exercise of the authority granted to him by the Louisiana constitution and pursuant to state law. La. Const. art. V §27 and La. R.S. 29:733 (Emergency Management Assistance Compact). Part of the assistance Yoes provided was to help the Morton County Sheriff's Office produce a "Know the Truth" video series. *See* R. 16. Yoes testified that he filmed footage there on cameras belonging to the St. Charles Parish Sheriff's Office and that the files were uploaded to a hard drive and provided to the Morton County Sheriff's Office. R. 258:1-259:16. Yoes testified he did not know if the original files captured on the SD drives in the devices he used still existed or had been overwritten, but that no one asked him about the files. *Id.*

The video files fall easily within the definition of the Public Records Law as "recordings" "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..." La. R.S. 44:1(A)(2)(a). Plaintiff specifically inquired about the existence of video files and whether any records had been withheld in its October 27, 2017, follow-up

correspondence to which Captain Bostick never responded. *See* Appellant Opening Br. at 9-10.

Appellee has never offered any legal basis for why these video files, if they still exist in the custody and control of the St. Charles Parish Sheriff's Office, should be exempt from the Public Records Law. The custodian never responded when asked about the video files prior to the hearing on the mandamus petition; and he offered no statutory basis or other legal authority at the hearing. And, he cites to no legal authority for denying access in his brief.

The District Court should have ordered the custodian to conduct a search for the video files and produce them if they still exist.<sup>1</sup>

### **CONCLUSION AND RELIEF SOUGHT**

The burden of proving that a public record is not subject to inspection, copying, or reproduction is upon the custodian. La. R.S. 44:31(B)(3). Access to a public record "can be denied only when a law, specifically and unequivocally, provides otherwise." *In re Matter Under Investigation*, 2007-1853 (La. 7/1/09), 15 So. 3d 972, 989. Appellee fell far short of meeting his burden with respect to the records at issue in this litigation.

For the foregoing reasons, Appellant prays this Court reverse the ruling below dismissing its action under the Public Records Law, and remand to the

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<sup>1</sup> Appellee similarly suggests that because Sheriff Champagne is "not the custodian of records for the National Sheriff's Association..." no documents relating to the association are public records. Appellee Br. at 2. However, any documents in the custody and control of the St. Charles Parish Sheriff's Office may be public records if "used in the performance of any work, duty, or function" of the Sheriff's Office. The custodian should have conducted a proper search for records responsive to requests No. 1 and 7. *See Shane v. Par.of Jefferson*, 2014-2225 (La. 12/8/15, 28), 209 So.3d 726, 746 (definition of "public records" may encompass "email sent on a public employee's government email system, even though the content of the email ostensibly related 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 an exception, exemption, or limitation, under the Louisiana Constitution or in the Public Records Law applies to prevent public disclosure of the record"). *See* Appellant's Opening Br. at 19-21.

District Court with instructions to order Defendant-Appellee Sheriff Greg

Champagne to:

- 1) Produce to Plaintiff the receipts and any other supporting documentation relating the travel of St. Charles Parish Sheriff's Office employees to North Dakota;
- 2) Conduct a further search to confirm whether electronic video files of footage filmed in connection with the travel by St. Charles Parish Sheriff's Office employees to North Dakota still exist, and if so, produce those records to Plaintiff;
- 3) Conduct a search for records that would be responsive to Plaintiff's Requests No. 1 and 7 and, if any such records are public records as defined in La. R.S. 44:1(A)(2)(a), produce them to Plaintiff;
- 4) Enter an order awarding Plaintiff reasonable attorney fees and other costs of the litigation, pursuant to La. R.S. 44:35(D).

August 13, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been transmitted via fax to all known parties of record this 13<sup>th</sup> day of August 2018 to the following counsel for Appellee:

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