

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

2018 CA 274

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

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

OPENING BRIEF OF APPELLANT

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JURISDICTIONAL STATEMENT

This is an appeal from a final judgment in a civil case, over which this Court has appellate jurisdiction pursuant to Article V, Section 10(A) of the Louisiana Constitution of 1974 and art. 2083 of the Code of Civil Procedure. On January 3, 2018, after a hearing in Twenty-Ninth Judicial District Court, St. Charles Parish, Hon. Emile R. St. Pierre granted Defendant's Exception of No Cause of Action dismissing the St. Charles Parish Sheriff's Office from the action; denied Defendant's Exception of Lack of Procedural Capacity; granted Defendant's Motion for Involuntary Dismissal of Plaintiff's mandamus action under the Public Records Law. On January 8, 2018, Judge St. Pierre signed a written order to that effect. R. 153. Plaintiff-appellant timely filed its motion for appeal on February 20, 2018, in accordance with La. C.C.P. art. 2087(A)(1). R. 162. The order granting the motion for appeal was signed by the district court on February 22, 2018. R. 166. This appeal is timely filed pursuant to the orders of this Court.

CONCISE STATEMENT OF THE CASE

This appeal challenges the district court's dismissal of Plaintiff-Appellant's mandamus petition brought pursuant to the Public Records Act despite the fact that testimony at the hearing made clear that: a) additional responsive, non-exempt public records exist and were never produced, and no legal justification for withholding them was provided before or during the litigation; b) additional responsive records existed at one point, and may still exist, but no search was conducted for them; and c) the search for records was clearly inadequate.

Plaintiff-Appellant Center for Constitutional Rights ("CCR" or "Appellant") brought this action under the Louisiana Public Records Law, La. R.S. 44:1 *et seq.*, against the St. Charles Parish Sheriff's Office and Sheriff Greg Champagne in his official capacity as Sheriff and custodian of records. R 46-54. The mandamus petition followed a public records request CCR submitted to the St. Charles Parish

Sheriff's Office ("Sheriff's Office") on September 18, 2017. R. 64. The request sought nine sets of documents that fell into three categories: 1) trips made by Sheriff Champagne and other Sheriff's Office personnel to North Dakota in connection with protests concerning an oil pipeline project there (Requests No. 1 and 2); 2) communications between Champagne and/or other Sheriff's Office employees with agents or employees of companies associated with the pipeline project in North Dakota and related projects in Louisiana (Requests No. 3-7, 9); and 3) records relating to the Sheriff's Office implementation of, and activities undertaken pursuant to, the Emergency Management Assistance Compact ("EMAC") (Request No. 8). R. 64-66.

On October 17, 2017, the Sheriff's Office produced documents that partially responded to Requests No. 2 and 8, concerning the travel of Sheriff's Office employees to North Dakota and activities pursuant to the EMAC, and three pages of a Facebook posting in response to Request No. 9. *See* R. Exhibit P-3, filed under seal. The Sheriff's Office was silent in its October 17th correspondence as to the other categories of requests and did not indicate whether any documents were being withheld pursuant to statutory exemptions under the Public Records Law.

On October 27, 2017, in an effort to clarify the Sheriff's Office response and "avoid the expense and inconvenience of litigating" the request, CCR sent a follow-up communication to the Sheriff's Office seeking confirmation as to whether any documents had been withheld and, if so, on what basis. R. 86; R. Exhibit P-4. The letter also explained in detail why Appellant believed more responsive records existed with respect to each of the request categories. *Id.*

The Sheriff's Office never responded to CCR's letter and on December 13, 2017, CCR filed the mandamus petition pursuant to La. R.S. 44:35, at which time a hearing was set for January 3, 2018. On December 27, 2017, Defendant-Appellee filed Exceptions of No Cause of Action and Lack of Procedural Capacity, R. 89, a

Motion to Strike, R. 96, and Opposition to the Petition for Mandamus, R. 101.

Appellant filed briefs in opposition to the exceptions and motion to strike, and a reply to Defendants' opposition to the Petition for Writ of Mandamus. R. 108, 113 and 120, respectively.

At the hearing on January 3, 2018, the trial court took up the exceptions and motion to strike. By stipulation, the parties agreed to the Exception of No Cause of Action which challenged the capacity of the Sheriff's Office to be sued. R. 174:12-20. The Sheriff's Office was thus dismissed from the matter leaving Sheriff Champagne, official custodian of records, as sole defendant. The court overruled Defendants' exception challenging CCR's procedural capacity to bring the suit, R. 180:30-181:1-7, and granted Defendants' Motion to Strike several paragraphs from Plaintiff's petition. R. 189:12-16.

The court then proceeded to conduct a hearing on the mandamus petition which confirmed through testimony of Sheriff's Office employees that additional records did exist – as predicted in CCR's correspondence aimed at attempting to avoid litigating the request. At the hearing, three employees of the Sheriff's Office testified: Sheriff Greg Champagne, Captain Maurice Bostick, in-house counsel who was tasked by the sheriff with responding to the records request, and Captain Patrick Yoes, one of the Sheriff's Office employees who traveled to North Dakota.

Sheriff Champagne testified that he made two trips to North Dakota in his capacity as president of the National Sheriff's Association, R.198: 23-199:5, and subsequently authorized other Sheriff's Office personnel to make multiple trips to North Dakota to assist law enforcement there. R. 208:26-210:7. With regard to the trips to North Dakota by other Sheriff's Office personnel, as set out in more detail below, testimony at the hearing from Captain Yoes and Captain Bostick revealed that more documents exist that are responsive to the request but were not produced and that other documents may still exist. *See e.g.*, R. 242:16-27; 252:9-21; 258:3-

259:16. The documents they confirmed exist consisted of receipts and other supporting documentation related to travel to North Dakota. *See e.g.*, R. 242:16-27; 252:9-21; 258:3-259:16. Testimony from both witnesses also demonstrated that the search for documents was incomplete and inadequate. *See e.g.* R. 236:15-26; 237:18-23; 238:22-25; R. 253:14-25; 258:3-259:16.

Despite this clear, un rebutted evidence, the trial court ruled that the Sheriff's office complied with the Public Records Law and granted Defendant's motion for involuntary dismissal. R. 261:31-262. Plaintiff then brought this appeal.

ASSIGNMENTS OF ERROR

1. The trial court erred in finding that the St. Charles Parish Sheriff's Office complied with its obligations under the Public Records Law when testimony demonstrated that additional responsive public records in fact existed and the custodian did not comply with the requirements of La. R.S. 44:32(C) requiring that they be produced upon request, or La. R.S. 44:32(D) requiring that the custodian explain in writing why they believe the records may not be "public records."

2. The trial court erred in dismissing the action and not requiring that the St. Charles Parish Sheriff's Office produce receipts and other documentation related to its employees' official travel that were responsive to the public records request, and not subject to any statutory exemptions, in light of testimony confirming that such records in fact existed.

3. The trial court erred in dismissing the action and not requiring that the St. Charles Parish Sheriff's Office conduct a further search for responsive records in light of testimony that revealed that additional records responsive to the request existed at one point, and may still exist, and the custodian did not search for them.

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court erred in dismissing the action and finding that the St. Charles Parish Sheriff's Office complied with its obligations under the Public Records Law in light of evidence that responsive records existed and were not produced and the custodian never provided any statutory basis in writing or, even subsequently at the hearing, for withholding such records?
2. Whether receipts and documentation related to official, work-related travel of Sheriff's Office personnel are "public records" as defined in La. R.S. 44:1(A)(2)(a) and should be produced by the St. Charles Parish Sheriff's Office?
3. Whether the trial court erred in dismissing the action and finding that the St. Charles Parish Sheriff's Office complied with its obligations under the Public Records Law, and not ordering it to conduct a further search, in light of evidence that additional records existed at one point, and may still exist, and the custodian did not search for them?

STATEMENT OF FACTS

St. Charles Parish Sheriff Greg Champagne traveled to North Dakota twice in 2016 to observe the law enforcement response to the Standing Rock protests. R. Exhibit P-1, p. 7; R. 198:23-199:5. Champagne's trips were taken in his capacity as President of the National Sheriff's Association to show his support as president of the organization. R 202:1-5. Subsequent to his trip to North Dakota in October 2016, Champagne authorized Sheriff's Office employees to travel there in relation to the protests at Standing Rock, R. 208:26-R. 209, in response to a request from local law enforcement there pursuant to the Emergency Management Assistance Compact ("EMAC"). R. 208:26-210:7. The EMAC is a compact entered into between states that provides for a state to request assistance from law enforcement agencies or emergency responders in other states in the event of disasters. R.

209:23-32. Subsequent to Champagne's first trip to North Dakota, the St. Charles Parish Sheriff's Office sent a group of six deputies on one trip and two deputies made two additional trips pursuant to EMAC requests from North Dakota. R.

209:12-19.

On September 18, 2017, Appellant submitted a public records request to the Sheriff's Office seeking, *inter alia*, records related to these trips. R. Ex. P-1; R. 64. The request sought nine sets of documents that fell into three categories: 1) trips made by Sheriff Champagne and employees of the Sheriff's Office to North Dakota in connection with protests concerning an oil pipeline project there (Request Categories No. 1 and 2); 2) communications between Champagne and/or other Sheriff's Office employees with agents or employees of companies associated with the pipeline project in North Dakota and related projects in Louisiana (Request Categories No. 3-7, 9); and 3) records relating to the Sheriff's Office implementation of the Emergency Management Assistance Compact ("EMAC") and Sheriff's Office activities undertaken pursuant to the EMAC (Request Category No. 8). *Id.* In particular, the request sought, "any and all public records" relating 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... .
- 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.
- 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).
- 4) Communications between Sheriff Greg Champagne and/or other employees or agents of the SCSO and officials, employees, or agents of Dakota Access, LLC.
- 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.

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

Id.

On October 17, 2017, the Sheriff's Office produced documents that partially responded to Requests No. 2 and 8, concerning the travel of Sheriff's Office employees to North Dakota and activities pursuant to the EMAC, and provided three pages of a Facebook page in response to Request No. 9. R. Ex. P-3 (filed under seal). The Sheriff's Office was silent in its October 17th correspondence as to the other categories of requests and did not indicate whether any documents were being withheld pursuant to statutory exemptions under the Public Records Law.

On October 27, 2017, in an effort to clarify the Sheriff's Office response and "avoid the expense and inconvenience of litigating" the request, Appellant sent a follow-up communication to the Sheriff's Office seeking confirmation as to whether any documents had been withheld and, if so, on what basis, and explaining in detail why it believed more responsive records existed. R. Ex. P-4, R. 86.

The Sheriff's Office never responded to Appellant's letter and on December 13, 2017, CCR filed the mandamus petition pursuant to La. R.S. 44:35. A hearing on the mandamus petition was held for January 3, 2018 where three employees of

the Sheriff's Office testified: Sheriff Greg Champagne, Captain Maurice Bostick, in-house counsel who was tasked with responding to records request, and Captain Patrick Yoes, one of the Sheriff's Office employees who made two trips to North Dakota. Their testimony confirmed that additional responsive records did exist, as predicted in CCR's October 27, 2017, correspondence which aimed to avoid litigating the request. *See* R. 242:16-27; 252:9-21; 258:3-259:16. The testimony of Bostick and Yoes also demonstrated that the search for records was incomplete and inadequate. *See e.g.* R. 236:7-26; 237:11-23; 238:8-30; 253:9-25; 258:3-259:16. Despite these admissions, the trial court ruled that the Sheriff's Office had complied with the request and then dismissed the action. R. 261:31-262:9.

In particular, Yoes testified that he made two trips to North Dakota and that he turned over receipts relating to his travel which had been undertaken pursuant to the EMAC. R. 252:13-21. Yoes testified, however, that he was only asked to produce documents in relation to Request No. 9 having to do with publicly disseminated information about the explosion at the Phillips 66 facility because of his responsibility for managing public information, R. 249:13-250:31; and that no one asked him about any emails or other documents related to his trips to North Dakota. R. 249:13-26; 253:14-25; 259:14-16. Captain Bostick, who was tasked with responding to the records request, *see* R. 225:1-2, acknowledged during his testimony that he was "sure there are receipts that back up any entry in the entire EMAC file for audit purposes" but that he did not consider those records responsive to the requests because a "listing all of the expenses" had been provided. R. 242:16-27. The receipts and supporting documentation for Yoes' and other employees' travel to North Dakota are responsive to the records request in at least two respects as it sought "any and all public records... relating to:"

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

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 *[sic]* pursuant to the EMAC.

R. Ex. P-1, R. 64.

In its follow-up correspondence of October 27, 2017, CCR specifically inquired about receipts and other documents relating to the travel. R. Exhibit P-4, R. 86. The Sheriff's Office never responded, prompting appellant's petition for mandamus, and the resulting hearing where it was confirmed that such records in fact existed. When asked why he did not respond to Appellant's attempt to clarify whether additional records existed and/or had been withheld, Bostick testified:

Because in this document Mr. Head was saying that he had a feeling or a hunch or a, I don't know, a dream or whatever, that there were additional documents which I knew to be incorrect because I had conducted a thorough search of what documents were responsive. So I did not respond to this document. It didn't request any additional documents it just said that he had a feeling. The law does not required *[sic]* me to address his feelings.

R. 244:31-245:9. As it turned out, additional documents did exist, Captain Bostick knew about them, failed to provide them and failed to provide any legal basis for not providing them.

Yoes also testified that other records related to his travel to North Dakota may still exist in the custody and control of the Sheriff's Office, but that to his knowledge no one searched for them. R. 258:3-259:16. Yoes testified that he took two or three cameras from the St. Charles Parish Sheriff's Office to North Dakota and uploaded files gathered on those devices and provided them to the Martin *[sic]* [Morton] County Sheriff's Office. *Id.* Yoes testified that the SD cards on those devices may be overwritten by now but that he did not know that to be a fact. R. 258:3-11. Yoes stated that to his knowledge no one had searched the devices for those records. R. 259:14-16. Captain Bostick's description of his search and

inquiries into what records may exist did not include the video files. This was despite the fact that CCR specifically asked about the existence of video files related to the trip to North Dakota in its October 27th follow-up correspondence. R. Exhibit P-4; R. 86. Yoes' testimony confirmed that such files existed at some point, and that they may still exist. Yet the Sheriff's Office never responded to CCR's follow-up communication about the files and the Court dismissed the mandamus petition without requiring the Sheriff's Office to conduct a search and determine whether the files still existed. R. 262.

The evidence also showed that Captain Bostick's search for other records requested and his resulting response was incomplete and inadequate. As noted above Captain Bostick's testimony revealed he withheld records responsive to requests No. 2 and 8 (the receipts and supporting documentation for the North Dakota trips by Sheriff's Office personnel) and never provided any statutory basis that would justify doing so. R. 242:16-27. With regard to Requests categories 3-5, which asked for documents relating to communications between Sheriff Champagne and/or other Sheriff's Office employees and agents or employees of companies connected to the events in North Dakota, Bostick testified that he only inquired of Sheriff Champagne. R. 236:7-237:23. Bostick limited his inquiry to Champagne even though at least six other Sheriff's Office employees were deployed to North Dakota under the EMAC. R. 209:12-19.

Bostick also testified he did nothing at all to determine if there might be records relating to Request. No. 7 which sought records "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." R. Ex. P-1. When asked about the process he undertook to determine if responsive records existed, Bostick testified, "The process was I thought about if we had National Sheriff's Association documents and we do not,

so that was the process.” R. 238:18-30. Bostick’s approach to this request was to do nothing despite the fact that Sheriff Champagne was serving as president of the National Sheriff’s Association at the time of the event at issue, R. 199:15-20, “receive[s] thousands of e-mails from the National Sheriff’s Association and [has] for years,” R. 216:30-32, testified that he had twice gone to North Dakota to show his support in late 2016 as President of that association, R. 202:1-5, deployed Sheriff’s Office personnel to North Dakota subsequent to his trips there on behalf of the association, R. 208:26-209: 19, and wrote a public post about his travel to observe the response to protests against the Dakota Access Pipeline Project, R. Ex. P-1, p. 7.

Despite the testimony that additional responsive records existed that would have been responsive to Requests No. 2 and 8, that other records may exist that would be responsive to Request No. 2, that the custodian’s search was clearly incomplete and inadequate, the trial court ruled the Sheriff’s Office had complied with the requirements of the Public Records Law, and granted defendant’s motion for involuntary dismissal. The trial court did not elaborate on its basis its holding. R. 262. Plaintiff timely brought this appeal.

SUMMARY OF THE ARGUMENT

The right of the public to have access to public records is a fundamental right, and is guaranteed by the Louisiana constitution. Access can only be denied when a law, specifically and unequivocally, provides otherwise. Whenever 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. *See In re Matter Under Investigation*, 2007-1853 (La. 7/1/09); 15 So. 3d 972, 989.

Receipts and other documentation relating to work-related travel of Sheriff’s Office employees are public records. Pursuant to La. R.S. 44:1(A)(2)(a), “public records” include documents of any form that relate to transactions, work, duties, or

functions, conducted “under the authority of the constitution or laws of this state” and/or because they 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.”

Records custodians have a duty to provide copies of public records to persons so requesting, pursuant to La. R.S. 44:32(C). If the custodian believes a requested record is a “public record,” the law requires that they notify the person making the request in writing of their determination and the legal basis for any claimed exemption within three business days. La. R.S. 44:32(D).

At the hearing on Appellant’s mandamus petition, it was confirmed that additional records existed relating to travel undertaken by Sheriff’s Office employees in their official, work-related capacity. The records are directly responsive to Appellant’s request. They were not provided to Appellant, and the custodian offered no justification for withholding them despite Appellant’s attempt to clarify that in advance of filing the mandamus petition. And neither was any statutory basis for withholding them offered at the hearing. The trips by the employees were made pursuant to the Emergency Management Assistance Compact, agreements between the states of Louisiana and North Dakota, and authorized by the Sheriff. In light of that, all such records should have been produced in response to the public records request.

Likewise, in light of testimony demonstrating that additional responsive records existed at one point and may still exist, the trial court erred in not ordering a further search for the records and dismissing the action instead.

The trial court erred in its interpretation and application of the Public Records Law that the additional responsive records did not need to be produced and that the Sheriff’s Office had complied with the requirements of the Public Records Law.

LAW AND ARGUMENT

This appeal involves the proper interpretation and application of the Public Records Law and as such is a question of law subject to the *de novo* standard of review. *Red Stick Studio Dev., L.L.C. v. State ex rel. Dep't of Econ. Dev.*, 2010-0193 (La. 1/19/11, 9), 56 So.3d 181, 187. *See also, Capital City Press, L.L.C. v. Louisiana State University System Bd. Of Sup'rs*, 2013-2001 (La.App. 1 Cir. 12/30/14, 12), 168 So.3d 727, 737, *writ denied*, 2015-0209 (La. 4/17/15), 168 So.3d 401 and *Gannett River States Publishing Corp. v. Monroe City School Bd.*, 44,231 (La.App. 2 Cir. 4/8/09, 6), 8 So.3d 833, 836-37, *writ denied sub nom. Gannett River States Pub. Corp. v. Monroe City Sch. Bd.*, 2009-1029 (La. 6/19/09), 10 So.3d 745 (cases brought pursuant to the Public Records Law). After review, judgment is rendered on the record, without deference to the legal conclusions of the tribunal below. *Red Stick Studio Dev., supra*.

I. Access to Public Records Is a Fundamental Right and May Only Be Denied When a Law Specifically and Unequivocally Provides Otherwise.

The “right to see” is a fundamental right embodied in article XII section 3 of the Louisiana Constitution, which provides that “[n]o person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.” La. Const. art. XII, § 3. The Louisiana Supreme Court has repeatedly instructed a broad reading of this provision:

The right of the public to have access to the public records is a fundamental right, and is guaranteed by the constitution. La. Const. art. 12, § 3. The provision of the constitution 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*. Whenever 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.

In re Matter Under Investigation, 2007-1853 (La. 7/1/09), 15 So. 3d 972, 989 (emphasis in original) citing *Capital City Press v. East Baton Rouge Parish Metropolitan Council*, 96-1979 (La. 1997), 696 So.2d 562, 564. See also, *New Orleans Bulldog Society v LSPCA*, 2016-1809 (La. 5/3/17), 222 So.3d 679, 684; *Shane v. The Parish of Jefferson*, 2014-2225 (La. 2015); 209 So.3d 726, 735-36; *Title Research Corp. v. Rausch*, 450 So.2d 933, 937 (La. 1984). The Public Records Law gives effect to the right set out in the Louisiana Constitution and was not intended to qualify the right in any way. *Shane, supra* at 734-36. Rather, the law “must be liberally interpreted to enlarge rather than restrict the public’s access to public records.” *Treadway v. Jones*, 583 So.2d 119, 121 (La. App. 4 Cir. 1990).

II. Receipts and Other Documentation Related to Official Travel by Sheriff’s Office Personnel are Public Records and the Court Should Have Ordered They Be Produced.

The receipts and supporting documentation relating to the official travel by Sherriff’s Office personnel to North Dakota are public records within the meaning of the Public Records Law and should have been produced in response to Appellant’s request. Public records are defined as:

(2)(a) 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) (emphasis added).

When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written, and no further interpretation may be made in search of the intent of the legislature. La. Civil Code art. 9. A statute must be “applied and interpreted in a manner that is logical and consistent with the presumed fair purpose and intention the Legislature had in enacting it.” *Sultana Corp. v. Jewelers Mut. Ins. Co.*, 2003-0360 (La. 12/03/03), 860 So.2d 1112, 1116. The Public Records Law gives effect to the right set out in the Louisiana Constitution and was not intended to qualify the right in any way. *Shane v. The Parish of Jefferson*, 2014-2225 (La. 2015); 209 So.3d 726, 734-36.

It could not be any clearer that the receipts and other documentation related to official, work-related travel of sheriff’s office personnel are public records as defined in the Public Records Law and as intended by the Legislature. They were “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.***” La. R.S. 44:1(A)(2) (emphasis added). The trips by the employees were made pursuant to the Emergency Management Assistance Compact, based on agreements between the states of Louisiana and North Dakota, and authorized by Sheriff Champagne. R. 208:26-210:7. For the same reasons, the receipts and other supporting financial documentation are public records pursuant to La. R.S. 44:1(A)(2) because they “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.”

Appellant’s records request explicitly and clearly sought “any and all public records” relating to:

- 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;

and

- 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.

While the Sheriff's Office produced some documents which contained a listing of the expenses, there is nothing that exempts the agency from producing copies of the actual receipts and other supporting documentation. Indeed, the supporting documentation is critical for the sake of transparency and ensuring the accuracy of what is reflected in the EMAC file. *See, e.g., Ferguson v. Stephens*, 623 So.2d 711 (La. Ct. App.1993) (sheriff's office's check register was a "public record" and not subject to an exemption claimed by sheriff).

As such these records should have been produced by the Sheriff's Office in direct response to the records request in the first place. After their existence was confirmed at a hearing on the matter, the trial court should have ordered that they be produced.

III. The St. Charles Parish Sheriff's Office Violated the Public Records Law by Not Providing Public Records Upon Request, Without Any Legal Basis for Withholding Them, and Acted Arbitrarily and Capriciously.

A. The Custodian Failed to Comply with La. R.S. 44:32(C) and (D) by Not Providing Public Records as Requested and Not Providing Any Written Justification for Withholding Them.

Records custodians have a duty to provide copies of public records to persons so requesting pursuant to La. R.S. 44:32(C). If the custodian believes a requested record is not a "public record," the law requires that they notify the person making the request in writing of their determination and the legal basis for any claimed exemption within three business days. La. R.S. 44:32(D). The Public Records Law thus places a duty on the custodian of public records to provide

immediate access to records that are available. *All. for Affordable Energy v. Frick*, 96-1763 (La.App. 4 Cir. 5/28/97), 695 So.2d 1126.

Importantly, the Public Records Law places the burden of proving a public record is not subject to inspection, copying, or reproduction, upon the custodian. La. R.S. 44:31(B)(3). *See e.g., Posner v. Gautreaux*, 2015-1196 (La.App. 1 Cir. 3/3/16), 192 So.3d 120 (holding that Sheriff did not meet his burden in proving that records related to homicide investigation were not subject to disclosure).

Captain Bostick was authorized by Sheriff Champagne to respond to the request at issue in this case. R. 225:1-2. *See* La. R.S. 44:1(A)(3) (custodian of public records is “the public official or head of any public body having custody or control of a public record, or a representative specifically authorized by him to respond to requests...”). Bostick’s testimony, as well as that of Captain Yoes, confirmed that additional responsive records existed, that they were not provided to Appellant, and that Bostick provided no basis for withholding them prior to the litigation as was required by La. R.S. 44:32(D). Not only did Bostick not comply with the requirements of La. R.S. 44:32(D) as an initial matter, he failed to respond even after Appellant sought clarification in an effort to avoid litigation. Neither did Bostick provide any statutory basis for withholding the records during his testimony at the hearing. Rather, he testified that he was “sure there are receipts that back up any entry in the entire EMAC file for audit purposes” but that he did not produce them because a “listing all of the expenses” had been provided. R. 242:16-27. But a listing of expenses is not the same as the records of the expenses themselves, and this is not a legal basis for not producing copies of the receipts and other supporting documentation related to the official travel of Sheriff’s Office employees.

Moreover, Appellant endeavored to obtain clarification as to the existence of these records and reasons for withholding prior to bringing the petition for

mandamus precisely to avoid going to court. R. 86; R. Exhibit P-4, R 20. Bosticks' testimony made clear that he received the letter and made a conscious decision not to respond to it. R. 244:29-245:9. His testimony also made clear that the Sheriff's Office, through his failure to provide either the public records or a valid legal basis for not doing so, violated the the Public Records Law, which necessitated Appellant's mandamus petition. The trial court erred in granting the Sheriff's Office's request for an involuntary dismissal rather than finding the office was in violation of the law and ordering production of the records.

B. The Custodian Acted Arbitrarily and Capriciously and Conducted an Inadequate and Incomplete Search.

Bostick acted arbitrarily and capriciously in withholding the receipts and other documentation related to the official travel to North Dakota of sheriff's office personnel pursuant to the EMAC because there was no rational, reasonable basis for doing so. Moreover, his search for different categories of records was clearly inadequate, unreasonable and arbitrary.

The test for determining whether an action is arbitrary and capricious is whether it was taken "without reason" *Aswell v. Division of Admin, State*, 2015-1851 (La. App. 1 Cir. 6/3/16), 196 So.3d 90, 94, *writ denied* 2016-1263 (La. 11/7/16), 209 So.3d 102 citing *Calcasieu League for Environmental Action Now v. Thompson*, 93-1978 (La.App. 1 Cir. 7/14/95), 661 So.2d 143, 150, *writ denied*, 95-2495 (La. 12/15/95), 664 So.2d 459.

The First Circuit Court of Appeal's decision in *Aswell* is instructive as there the Court held that the Division of Administration acted arbitrarily and capriciously in failing to respond to a request for records of a public official's travel, even though the records were still being processed and were not finalized at time of the request. *Id.* The requestor was thus entitled to attorney's fees where the DOA had documents responsive to the request at the time of the request. *Id. See*

also, Louisiana Capital Assistance Ctr. v. Dinvaut, 16-383 (La.App. 5 Cir. 12/7/16, 9), 207 So.3d 1187 (holding that District Attorney's voluntary production of the requested records before issuance of writ of mandamus did not extinguish nonprofit's claim for attorney's fees and costs). Moreover, 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 and arbitrary. *Indep. Weekly, LLC v. Pope*, 2016-282 (La.App. 3 Cir. 9/28/16), 201 So.3d 951, 961.

Bostick's testimony revealed that while he was "sure" receipts and other documentation relating to the North Dakota trips existed, he did not produce them and provided no reasonable basis for not doing so. R. 242:16-27. The listing of expenses in the EMAC file is not the same thing as the documentary proof of those expenses and entries. Both were responsive and should have been produced.

In addition, Bostick's testimony revealed a willful disregard for the facts and circumstances of the request. With regard to the other categories of requests, he testified that he only asked the sheriff about any documents he might have relating to request categories 3-5, concerning communications between employees of the Sheriff's office and employees or agents of the companies connected to the events in North Dakota, but not the other employees who were also sent to North Dakota.

With regard to Request No. 7, seeking records relating the testimony of the National Sheriff's Association at a hearing of the Louisiana Department of Environmental Quality in Support of a pipeline project related to the one in North Dakota, Bostick testified he did nothing to determine if records might have existed in relation to that request because "we don't have records of the National Sheriff's Association." R. 238:18-20. Bostick did nothing in regard to this category of request despite the fact that Champagne served as President of the Association at the time of the event in question, testified that he "receive[s] thousands of e-mails

from the National Sheriff's Association and [has] for years," R. 216:29-32, and deployed a number of Sheriff's Office personnel to North Dakota subsequent to his own trips there as President of the association. R. 208:26-210:7. *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").

Bostick should have turned over the receipts and supporting documentation relating to sheriff's office employees travel. It was arbitrary and capricious of him not to do so. Moreover, the search with respect to the other categories of requests was inadequate, incomplete and without reasonable basis.

The trial court erred in ruling that the Sheriff's Office had substantially complied with the Public Records Law and in granting its motion for involuntary dismissal.

IV. The Court Should Have Ordered the Sheriff's Office to Confirm Whether Records Requested Still Exist After Testimony Confirmed They Had Been Created and Existed at One Time.

The trial court should have ordered the custodian of records to confirm whether or not video files collected, prepared, and possibly retained in connection with the employees' travel to North Dakota still existed. As with the receipts and other documentation related to these trips, these videos files would have been responsive to the records request as they would have 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.

La. R.S. 44:1(A)(2)(a). The definition of “public records” specifically includes “tapes,” “recordings,” and “information contained in electronic data processing equipment.” *Id.*

Captain Yoes testified that two or three sheriff’s office cameras were taken to North Dakota and that they collected video stored on the SD cards of those cameras in connection with their trips, which they uploaded and provided to authorities in North Dakota. R. 258:3-259:16. Yoes testified that he could not confirm whether the files still existed, or had been overwritten on the SD cards, but that to his knowledge no one searched them. *Id.* Appellant specifically inquired about any video related to these trips in its October 27th follow-up correspondence to which it received no response. R. Ex. P-4, R. 86.

It was clear error for the trial court not to order a search to determine if the requested records still existed.

CONCLUSION

WHEREFORE, for the foregoing reasons, Appellant prays this Court reverse the ruling below dismissing its action under the Public Records Law, and order the Sheriff’s Office to produce records previously withheld, conduct a further search and confirm whether additional described at the hearing records still exist.

July 11, 2018

Respectfully submitted,

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Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been transmitted via fax to all known parties of record this 11th day of July 2018 to the following counsel for Appellees:

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Attorney for Plaintiffs-Appellants

APPENDIX

APPENDIX A

29TH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. CHARLES

STATE OF LOUISIANA

NO.: 83,927

DIVISION C

THE CENTER FOR CONSTITUTIONAL RIGHTS

VERSUS

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

JUDGMENT

FILE FOR RECORD
CLERK OF COURT
ST. CHARLES PARISH, LA
2018 JAN -8 AM 9:02
DEPUTY *Michelle LaSalle*

This matter came for hearing on January 3, 2018, on the following: (1) a Rule to Show Cause Why Defendant Should Not be Ordered to Produce Public Records in Accordance with the Public Records Act filed by plaintiff; (2) on Exceptions of No Cause of Action and Lack of Procedural Capacity filed by defendant, Greg Champagne, in his official capacity as Sheriff of St. Charles Parish and Custodian of Records and (3) on a Motion to Strike filed by said defendant. By consent of the parties, defendant's exceptions and motion were addressed and heard before hearing was held on plaintiff's rule to show cause.

When, after considering the pleadings, exhibits, memoranda, law and argument of counsel, and for the reasons orally stated, wherefore

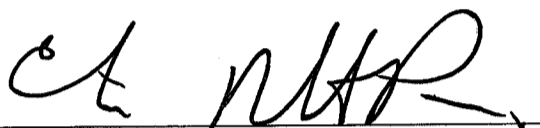
IT IS ORDERED, ADJUDGED AND DECREED that:

- (1) The Exception of No Cause of Action filed by defendant, Greg Champagne, in his official capacity as Sheriff of St. Charles Parish and Custodian of Records is granted, dismissing plaintiff's claims herein against the St. Charles Parish Sheriff's Office;
- (2) The Exception of Lack of Procedural Capacity filed by defendant, Greg Champagne, in his official capacity as Sheriff of St. Charles Parish and Custodian of Records, is denied;
- (3) The Motion to Strike filed by defendant, Greg Champagne, in his official capacity as Sheriff of St. Charles Parish and Custodian of Records is granted, striking paragraphs 1-7 from the Petition and Amended Petition for Writ of Mandamus Under the Louisiana Public Records Act;

(4) The Motion for Involuntary Dismissal orally urged by defendant, Greg Champagne, in his official capacity as Sheriff of St. Charles Parish and Custodian of Records is granted, dismissing plaintiff's Petition and Amended Petition for Writ of Mandamus Under the Louisiana Public Records Act;

(5) Plaintiff be cast for all costs herein.

JUDGMENT READ on January 3, 2018, and is **RENDERED AND SIGNED** at Hahnville, Louisiana this 8th day of January, 2018.



EMILE R. ST. PIERRE, JUDGE

PLEASE NOTIFY ALL COUNSEL/ PARTIES BY MAIL

CERTIFICATE OF THE CLERK

I hereby certify that a copy of the foregoing motion and/or order has been mailed to all counsel of record

this 8th day of January 2018

By Lance Marino
Lance Marino
Clerk of Court

27
28

w/ Notice of Judgment
P. Speas
W. Angley
S. Mander
M. Bastien

APPENDIX B

1 be public records that should be
2 produced. We are concerned at the nature
3 of the searches that were conducted, the
4 interviews that were conducted. There
5 are indications from Captain Yoes that
6 not all possible records have been
7 explored or the formats of these
8 possible records have been explored and
9 those still remain outstanding. The
10 follow up correspondence that the Center
11 for Constitutional Rights sent in October
12 indicated and attempted to narrow these
13 issues. We attempted to get responses in
14 terms of the Sheriff's Office position
15 with respect to these categories of
16 requests, we did not get them. We got no
17 response whatsoever which necessitated
18 the filling of this petition.

19 At a minimum we would request
20 the opportunity to do a post trial
21 memorandum that reviews the testimony
22 more closely so that we can provide to
23 the Court a more clear assessment of
24 remains outstanding.

25 BY THE COURT:

26 Okay. Thank you. Brief
27 response, Mr. Mauterer.

28 BY MR. MAUTERER:

29 No.

30 BY THE COURT:

31 Based on the evidence and
32 testimony that has been adduced, the

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Court finds that the sheriff officer has demonstrated substantial degree of compliance with the public records as required by law, meaning the Louisiana Public Records Law and the Louisiana Supreme Court. Therefore, the Motion for Involuntary Dismissal is granted. All costs are to be paid by the plaintiff.

Thank y'all. The court is in recess until tomorrow at nine o'clock.

BY MR. MAUTERER:

Thank you, Your Honor.

BY MS. SPEES:

Thank you, Your Honor.