

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

ERIN FRIEDBERG,

Plaintiff,

vs.

CASE NO.: 2012 CA 360
K

CITY OF GAINESVILLE, FLORIDA

Defendant.

SUMMONS

THE STATE OF FLORIDA
To Each Sheriff of the State:

YOU ARE COMMANDED to serve this Summons and a copy of the Complaint in this action on the Defendant:

CITY OF GAINESVILLE, FLORIDA
BY Service on its City Manager,

Russ Blackburn, City Manager
City of Gainesville, Florida
200 E. University Ave., 4th Floor
Gainesville, FL 32627

The Defendant is required to serve written defenses to the Complaint on

JOSEPH C. SHOEMAKER
Florida Bar No. 0319790
Bogin, Munns & Munns, P.A.
628 South 14th Street
Leesburg, FL 34748
(352) 728-3773

A True Copy
SADIE DARNELL, SHERIFF
ALACHUA COUNTY, FLORIDA
Served at 11:20 AM on the 31st day of Jan 20, 12
BY [Signature] AS DEPUTY SHERIFF

the Plaintiff's attorney, within twenty (20) days after service of this Summons on the Defendant, exclusive of the day of service, and to file the original of the answer on the Clerk of this Court either before service on the Plaintiff's attorney or immediately thereafter. If the Defendant fails to do so, a default will be entered against the Defendant for the relief demanded in the Complaint.

DATED this 31 day of Jan., 2012.

J.K. "BUDDY" IRBY

(COURT SEAL)



Clerk of the Courts

By:

[Signature of J.K. Irby]

Deputy Clerk

COPY

J.K. IRBY
CLERK OF CIRCUIT COURT
CIVIL DEPARTMENT
201 E UNIVERSITY AVE
GAINESVILLE FL 32601

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

ERIN FRIEDBERG,

Plaintiff,

vs.

CASE NO. *2012 CA 360*
R

CITY OF GAINESVILLE, FLORIDA

Defendant.

COMPLAINT

Plaintiff, Erin Friedberg, (hereafter "Plaintiff") by and through the undersigned attorney, hereby files this complaint for the issuance of a writ of mandamus, pursuant to Florida Rule of Civil Procedure 1.630, and requests that such writ issue against Defendant, the City of Gainesville, Florida, (hereafter "Defendant") and alleges:

1. The Defendant, the City of Gainesville, Florida is a Florida municipal corporation.
2. The Plaintiff is an individual residing in Alachua County, Florida.
3. This Court has jurisdiction to issue a writ of mandamus pursuant to Article V § 5(b) of the Florida Constitution.
4. Venue is appropriate in this matter because both parties are located in Alachua County, Florida.
5. On or about October 31, 2012, the Plaintiff filed a charge of discrimination with the Florida Commission on Human Relations (hereafter the "FCHR") regarding alleged workplace discrimination by the Defendant while the Plaintiff was employed by the Defendant (hereafter the "Charge").
6. As a part of the FCHR investigation of the Charge, the FCHR has asked the Plaintiff

to provide documents, statements, and/or information regarding her employment with the Defendant.

7. On or about December 21, 2011, the Plaintiff, through her attorney, filed a public records request with the Defendant requesting various documents relating to her employment with the Defendant in order to comply with the requests from the FCHR (hereafter the "PRR"). A true and correct copy of the PRR is attached hereto as exhibit "A" and is by reference made a part hereof.

8. As the Defendant's attorney had already been involved in the FCHR investigative process, a copy of the PRR was also forwarded to such attorney as a courtesy, however no mention of the Charge was made in the PRR.

9. On or about January 3, 2012, counsel for the Defendant responded to the Plaintiff's counsel noting that the Defendant had received the PRR and was in the process of coordinating with Defendant's managers regarding a response to the PRR (hereafter the "First Defendant Response"). A true and correct copy of the First Defendant Response is attached hereto as exhibit "B" and is by reference made a part hereof.

10. The First Defendant Response requests that the Plaintiff "...direct communications relating to her charge of discrimination to me." While no mention of the Charge was made in the PRR, the Defendant, through the First Defendant Response, clearly has acknowledged that the PRR requests are obviously related to the Charge.

11. On or about January 10, 2012, counsel for the Defendant formally responded to the PRR by sending a letter to Plaintiff's counsel (hereafter the "Second Defendant Response"). A true and correct copy of the Second Defendant Response is attached hereto as exhibit "C" and is by

reference made a part hereof.

12. The Defendant, through the Second Defendant Response, stated that “extensive clerical and supervisory assistance” would be required to respond to the PRR and that, pursuant to Florida Statutes 119.07(4)(d), the Plaintiff would be required to pay for both labor costs and copying costs prior to the Defendant providing such records.

13. Florida Statutes section 119.07(4)(d), Florida Statutes, requires special service charges for responses to public records requests be reasonable.

14. The Defendant, through the Second Defendant Response, stated that there are approximately 150,000 email communications both to and from the Plaintiff during her employment with the Defendant and that each of these email communications would need to be reviewed by Defendant’s staff prior to potentially exclude information from what ultimately might be provided to the Plaintiff.

15. The Defendant, through the Second Defendant Response, stated that the estimated costs review and produce review the Plaintiff’s own email records from her employment with the Defendant were estimated to be \$39,942.44 and requested payment of such sum prior to producing any email communication records or even making a determination what portion of such records might ultimately be produced.

16. While it is not entirely clear on the face of the Second Defendant Response what portion, if any, of the request for payment of nearly **Forty Thousand Dollars** was based upon copying costs, the true cost to duplicate computer files onto a CD-Rom disc (as is fairly common practice in 2012) would almost certainly be minimal and would require minimal staff time.

17. While it is not entirely clear on the face of the Second Defendant Response what

portion of the request for payment of nearly Forty Thousand Dollars was based upon special service charges, such request appears, on its face, to be unreasonable.

18. While it is not entirely clear on the face of the Second Defendant Response what portion of the request for payment of nearly Forty Thousand Dollars was based upon special service charges, such request does appear, on its face, to be excessive.

19. The Defendant clearly cannot make any legitimate argument that the actual costs to retrieve and duplicate the email communications requested by the Plaintiff will cost any significant amount and, without question, cannot reasonably argue that the actual costs to retrieve and duplicate such email communications will approach Forty Thousand Dollars.

20. The Florida courts have recognized that excessive special service charges for public records requests could very well serve to inhibit the pursuit of rights conferred by the Public Records Act. *See e.g. Carden v. Chief of Police, City of Clewiston Police Dep't*, 696 So. 2d 772, 773 (Fla. Dist. Ct. App. 2d Dist. 1996).

21. The Defendant, through the Second Defendant Response, made the contention that some of the records requested by the Plaintiff through request number four (4) of the PRR are "confidential and exempt medical records" and refused to provide such public records to the Plaintiff unless and until she provided written authorization as to same pursuant to Florida Statutes section 112.08(7). However, such statute does not require such authorization for either the Plaintiff (or her attorney) to obtain such records.

22. Florida Statutes section 112.08(7) clearly provides:

"(7)All medical records and medical claims records in the custody of a unit of county or municipal government relating to county or municipal employees, former county or municipal employees, or eligible dependents of such employees enrolled in a county or municipal group insurance plan or self-insurance plan shall be kept

confidential and are exempt from the provisions of s. 119.07(1). Such records shall not be furnished to any person other than the employee or the employee's legal representative, except upon written authorization of the employee, but may be furnished in any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the employee or the employee's legal representative by the party seeking such records." (emphasis added)

23. The PRR, on its face, made it quite clear that the Plaintiff was requesting records. As such she is "the employee" that is referenced in the highlighted section of Florida Statutes section 112.08(7) in paragraph 22 herein. The plain English reading of the statute makes it clear that "the employee" is an exception to the requirement of any form of written authorization for release of medical records.

24. The PRR, on its face, made it quite clear that the undersigned represented the Plaintiff and made the records request on her behalf. As such the undersigned is "the employee's legal representative" that is referenced in the highlighted section of Florida Statutes section 112.08(7) in paragraph 22 herein. The plain English reading of the statute makes it clear that "the employee's legal representative" is an exception to the requirement of any form of written authorization for release of medical records.

25. The Defendant's demand for a clearly excessive and unreasonable fee to produce public records has clearly prejudiced the Plaintiff and impaired her ability to properly respond to queries and requests from the FCHR related to the Charge.

26. The Defendant's unsubstantiated demand for "written authorization" for the Plaintiff and/or her attorney to access public records regarding the Plaintiff's own medical condition(s) has clearly prejudiced the Plaintiff and impaired her ability to properly respond to queries and requests from the FCHR related to the Charge.

27. The Defendant has clearly acknowledged the relationship between the Charge and the PRR (despite no mention of the Charge in the actual PRR) and as such the demands for a clearly excessive and unreasonable fee, as well as the improper demand for written authorization, are all the more egregious as they impact both the Plaintiff's rights to open public records and her rights to have a fair investigation of the Charge.

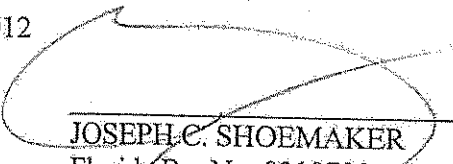
28. The Plaintiff has hired the undersigned attorney and law firm to represent her in this matter and had agreed to pay a reasonable fee for such services.

29. The Plaintiff is entitled to an award of reasonable attorney's fees if she prevails in this action pursuant to section 119.12 Florida Statutes.

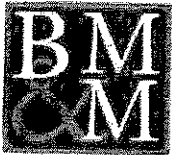
30. All necessary conditions precedent to the filing of this action have occurred and/or they have been waived by the Defendant.

WHEREFORE, Plaintiff respectfully requests that the Court issue a writ of mandamus ordering Defendant to provide the requested public records; determining what special service charges, if any, may be charged by the Defendant for the production of such public records; awarding the Plaintiff reasonable attorney's fees and costs; and awarding any further relief this Court deems just and proper.

Dated this 26 day of January 2012



JOSEPH C. SHOEMAKER
Florida Bar No. 0319790
BOGIN, MUNNS & MUNNS
628 S. 14th St.
Leesburg, FL 34748
(352) 728-3773 (PHONE)
(352) 728-5488 (FAX)
Attorneys for Plaintiff



**Bogin, Munns
& Munns, P.A.**

Attorneys at Law ■ Since 1979

Joseph C. Shoemaker
Attorney At Law
628 South 14th Street
Leesburg, FL 34748

Ph: (352) 728-3773
Fax: (352) 728-5488
jshoemaker@boginmunns.com

December 21, 2011

CERTIFIED MAIL/RRR

EXHIBIT "A"

City Of Gainesville, Florida
Attn: Records Custodian/City Clerk
200 East University Avenue
Gainesville, FL 32601

RE: Public Records Request

Dear Sirs:

My name is Joseph Shoemaker and I represent Ms. Erin Friedberg. I am, on behalf of my client, pursuant to Florida Statutes § 119.07 hereby requesting that the City of Gainesville, Florida (hereafter the "City") immediately provide me with copies of all of the following public records:

1. A complete copy of the personnel file for Erin Friedberg
2. A complete copy of the personnel file for John Hayes
3. Copies of any contract(s) or agreement(s) between John Hayes and the City.
4. Copies of any written statements, notes, email correspondence, memoranda or other documents regarding any requests for leave under the Family and Medical Leave Act ("FMLA") by Erin Friedberg and the approval and/or denial of such leave request(s).
5. Copies of any written statements, notes, email correspondence, memoranda or other documents regarding the termination, possible termination, or resignation of Erin Friedberg.
6. A copy of the current written job description for the Program Coordinator with oversight of the Visual Arts Program at the City.
7. A copy of the current written job description for the Cultural Affairs Supervisor at the City.
8. Copies of the written job descriptions for the positions currently held and previously held by John Hayes at the City.
9. Copies of all electronic mail ("email") communications both from and to Erin Friedberg while she was employed by and/or performing services for the City.

If you assert that an exemption applies to any of the documents requested then I am requesting that you, for each such document and exemption:

www.BoginMunns.com

1. Specifically identify, in writing, any documents responsive to this request that exist, but which are not being provided or are being provided with exempted material removed;
2. Only delete or excise from the record that portion of the record with respect to which an exemption has been asserted and validly applies, and produce the remainder of such record; and
3. State the basis of the exemption that you contend is applicable to the record, including the statutory citation to an exemption created or afforded by statute and state in writing and with particularity the reasons for the conclusion that the record is exempt.

I would request that I be contacted at the following address and/or phone number as soon as such records are available:

JOSEPH C. SHOEMAKER
Bogin, Munns & Munns, PA
628 S.14th Street
Leesburg, Florida 34748
(352) 728-3773

Sincerely,

Joseph C. Shoemaker

CC: Erin Friedberg
City Attorney's Office

EXHIBIT "B"

City of Gainesville
Office of the City Attorney

Marion J. Radson ♦
City Attorney



Ronald D. Combs
Shayla L. McNeill*
Stephanie M. Marchman
Daniel M. Nee ♦
Nicolle M. Shalley
Elizabeth A. Waratuke ♦

♦Board Certified City, County
& Local Government Law

January 3, 2012

Joseph C. Shoemaker, Esquire
Bogin, Munns & Munns, PA
628 S. 14th Street
Leesburg, Florida 34748

Re: Public Records Request

Dear Mr. Shoemaker:

Your public records request submitted on behalf of Ms. Erin Friedberg was received by the City of Gainesville on December 28, 2011. The public records request relates to the allegations in the charge of discrimination filed by Ms. Friedberg against the City. Given that I am representing the City in this charge of discrimination, I respectfully request that you direct communications relating to her charge of discrimination to me.

I will coordinate with the relevant City departments and managers to respond to your public records request. In the meantime, if you should have any questions, please do not hesitate to contact me.

Sincerely,

Stephanie M. Marchman
Assistant City Attorney II

200 E. University Ave.
Room 425
Gainesville, Florida 32627

PHONE (352) 334-5011
FAX (352) 334-2229
City Hall and the City Attorney's Office
are closed on Fridays
Hours: M-Th, 7-6

*Utilities Legal Services
P.O. Box 147117, Sta. A-138
Gainesville, Florida 32614
PHONE: (352) 393-1010
FAX: (352) 334-2277
Hours: M-F, 8-5

EX-100 "C"

**City of Gainesville
Office of the City Attorney**

Marion J. Radson ♦
City Attorney



Ronald D. Combs
Sean McDermott
Shayla L. McNeill*
Stephanie M. Marchman
Daniel M. Nee ♦
Nicole M. Shalley
Elizabeth A. Waratuke ♦

♦Board Certified City, County
& Local Government Law

January 10, 2012

Joseph C. Shoemaker, Esquire
Bogin, Munns & Munns, PA
628 South 14th Street
Leesburg, Florida 34748

Re: Public Records Request

Dear Mr. Shoemaker:

Your public records request submitted on behalf of Ms. Erin Friedberg was received by the City of Gainesville on December 28, 2011. On January 3, 2012, I sent you a letter acknowledging this request and informing you that I would be coordinating with the relevant City departments and managers to respond to this request. Based on the information I received from these departments and managers, the City responds to your public records request as follows:

In order to respond to your public records request, extensive clerical and supervisory assistance by City personnel is required. Accordingly, you will be required to pay a special service charge, pursuant to Florida Statute Section 119.07(4)(d), for the labor costs incurred for such extensive assistance, as well as copy costs of 15 cents per one-sided copy and 20 cents per two-sided copy (the first ten copies are free), prior to the City copying the records requested.

The total estimated cost for your request, including the special service charge and copy costs, is \$40,011.71. The breakdown of the total costs is as follows:

The estimated cost for request numbers 1, 3, 4, 5, 6, 7, and 8 is \$69.27. (It should be noted that this estimate does not include an estimated cost to entirely respond to request #4, as some of the records responsive to this request are confidential and exempt medical records pursuant to Florida Statute 112.08(7). These records may be released to Ms. Friedberg upon receipt of her written authorization.)

With regard to request number 2, since John Hayes is not a City employee, the City does not have any records responsive to this request.

200 E. University Ave.
Room 425
Gainesville, Florida 32601

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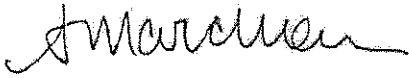
*Utilities Legal Services
P.O. Box 147117, Sta. A-138
Gainesville, Florida 32614
PHONE: (352) 393-1010
FAX: (352) 334-2277
Hours: M-F, 8-5

Mr. Shoemaker
Page 2 of 2

In response to request number 9, there are approximately 150,000 email communications both from and to Ms. Friedberg while she was employed by the City and/or performing services for the City. City staff would be required to review each of these emails to exclude personal, confidential, and exempt information prior to producing copies of such emails. The cost to review and produce the emails requested is estimated to be \$39,942.44.

Upon receipt of your payment, you will be furnished with copies of the records requested, to the extent that such records are not confidential or exempt from disclosure. If you should have any questions about how to remit payment, please contact my legal assistant, Karen MacFarlane at (352) 393-8818.

Sincerely,



Stephanie M. Marchman
Assistant City Attorney II