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THE EIGHTH JUDICIAL CIRCUIT COURT
IN AND FOR ALACHUA COUNTY, FLORIDA
CIVIL DIVISION W

10:10A
March 4 2014
John B. [unclear]
[unclear]

CABLE NEWS NETWORK, INC.,

Petitioner,

v.

GAINESVILLE POLICE DEPARTMENT,

Respondent.

Case No.: 01-2014-CA-703

ALTERNATIVE WRIT OF MANDAMUS/ PROCESS
[Fla. R. Civ. P. 1.630(d)(3) (2011); Fla. R. Civ. P. 1.070(a)]

THIS ACTION came before this Court upon Petitioner's petition for writ of mandamus, filed 26 February 2014.

Petitioner alleges that Respondent has failed to fully comply with its request, made pursuant to section 119.07, Florida Statutes, to inspect photographs from a shooting incident which took place on 30 September 2007. Petitioner alleges that Respondent has asserted that the incident is an active criminal investigation, and that the photographs may therefore not be disclosed.

Petitioner seeks a writ of mandamus from this Court compelling Respondent to disclose records related to the described incident.

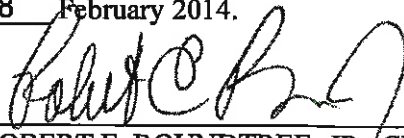
This Court finds that the petition shows a prima facie case for relief, and therefore issues this alternative writ of mandamus. *See* Fla. R. Civ. P. 1.630(d)(3). Upon being served with this writ and a copy of the petition, Respondent shall be required to EITHER (1) provide Petitioner with the requested records described above, or (2) provide the requested records to this court for in camera inspection and show cause, in writing, why the requested relief should not be granted.

Accordingly, it is **ADJUDGED** that

1. Petitioner must cause this writ to be served, along with a copy of the petition, on the Respondent in the manner prescribed by law. *See* Fla. R. Civ. P. 1.630(d); Fla. R. Civ. P.

- 1.070. This alternative writ of mandamus is a form of process authorized by law, and serves the same function as a standard summons. *See Fla. R. Civ. P. 1.070(a).*
2. It is Petitioner's responsibility to obtain a certified copy of this writ, and deliver it, along with a copy of the petition, to the Sheriff of the County in which the Defendant resides for service of process.
3. Upon being served with process, Defendant/Respondent shall respond in the manner provided for in Florida Rule of Civil Procedure 1.140. *See Fla. R. Civ. P. 1.630(e).* As set forth above, Respondent must either comply with the Petitioner's request, or, in the alternative, show cause in writing why the relief requested by Petitioner should not be granted.
4. A hearing will be held March 14, 2014, 10:00 a.m., Alachua County Courthouse, Family and Civil Justice Center, Room 415, 201 East University Avenue, Gainesville, Florida.

ORDERED in Alachua County, Florida on 28 February 2014.



ROBERT E. ROUNDTREE, JR., CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed on 28 February 2014 to:

Judith Mercier
Judy.mercier@hklaw.com



Karen Wable, Judicial Assistant

/blb

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

CASE NO.:
DIVISION:

CABLE NEWS NETWORK, INC.

Plaintiff,

vs.

GAINESVILLE POLICE DEPARTMENT,

Defendant.

**PETITION FOR WRIT OF MANDAMUS OR
COMPLAINT FOR DECLARATORY RELIEF**

Plaintiff Cable News Network, Inc. ("CNN"), by and through its undersigned counsel, files this Petition for Writ of Mandamus pursuant to Florida Rule of Civil Procedure 1.630, and alternatively a Complaint for Declaratory Relief pursuant to Chapter 86, Florida Statutes, against Defendant Gainesville Police Department (the "Department") and states:

ALLEGATIONS COMMON TO ALL COUNTS

1. This is an action to enforce the public right of access to records of government as guaranteed by art. I, sec. 24(a), Constitution of Florida, and by Sec. 119.07(1), Florida Statutes.
2. Specifically, this action concerns the Department's refusal to release public records, specifically crime scene photographs from a shooting incident that occurred more than six years ago on September 30, 2007, despite demands from CNN.
3. This Court has jurisdiction over the Petition for Writ of Mandamus pursuant to Article V, Section 5(v) of the Florida Constitution and Florida Rule of Civil Procedure 1.630. This Court has jurisdiction over the Complaint for Declaratory Relief pursuant to Chapters 86

and 119, Florida Statutes.

4. Venue is appropriate in Alachua County because the cause of action accrued here.

5. CNN requests that this Court expedite consideration of this cause pursuant to Section 119.11(1) which states: “(w)henever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the cause priority over other pending cases.”

6. CNN is a corporation formed under the laws of Delaware, doing business in Florida.

7. The Gainesville Police Department is an agency for the purposes of Chapter 119, the Florida Public Records Act. Fla. Stat. §119.011(2). The Department has a ministerial and nondiscretionary duty to permit inspection, examination, and copying of its public records of by any person desiring to do so, at reasonable times, under reasonable conditions, and for reasonable cost, pursuant to §119.07(1)(a), Florida Statutes.

8. On January 28, 2014, CNN made a public records request seeking photographs from a shooting incident that occurred more than six years ago on September 30, 2007 ("Shooting Incident"). The Incident/Investigation Report ("Report") on the Shooting Incident was released in 2013, however, the photographs identified in the Report have not been released.

9. In 2009, Patricia Nixon from the Department appeared on two news broadcasts and various photographs of the car involved in the Shooting Incident were shown during the broadcast, as well as a sketch based on information provided at the time of the Shooting Incident.

10. On January 30, 2014 the Department responded that they would not be releasing any photographs taken as part of the investigation of the Shooting Incident as they considered it an active investigation.

11. Both in-house counsel for CNN and undersigned counsel for CNN contacted the City Attorney for the City of Gainesville in an effort to obtain information justifying the basis for the Department's refusal to release the photographs from an incident more than six years ago and the City Attorney provided no information other than that it was considered an "active criminal investigation" and that there had been two recent interviews.

12. More than six years has elapsed since the date of the Shooting Incident and no information has been provided by the Department to establish that the investigation has been anything but dormant, much less, an "active" criminal investigation. The reference to "two recent interviews" is insufficient to meet the Department's burden of establishing its investigation has been "continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future." Nor has the Department explained how the investigation is "continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future" in light of the statute of limitations.

13. For a century, Florida law has reflected an unfailing commitment to open government. *State v. McMillan*, 38 So. 666, 667-668 (Fla. 1905). The legislature codified Florida's commitment in 1967 by enacting Florida's Public Record Act, Chapter 119, Florida Statutes, which guarantees the public access to government records within narrowly defined exceptions. In 1992 the commitment to government in the sunshine was elevated to a constitutional right by a vote of Florida's citizens. *See Florida Constitution, Article I, Section 24.*

14. "The general purpose of the Public Records Act [] is to open public records to allow Florida's citizens to discover the actions of their government." *Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365, (Fla. 4th DCA 1997) (citing *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1136 (Fla. 4th DCA 1994)).

15. "The spirit, intent and purpose of the [Public Records Act] requires a liberal judicial construction in favor of the public and a construction which frustrates all evasive devices." *Florida Parole and Probation Comm'n v. Thomas*, 364 So. 2d 480, 481 (Fla. 1st DCA 1978).

16. An agency can refuse to produce the public records only if the Legislature has adopted an expressly applicable exemption to the Public Records Act and to Article I, Section 24. Absent such a legislative exemption, the duty to provide public records is absolute. *See Wait v. Florida Power & Light Co.*, 372 So. 2d 420, 422 (Fla. 1979) ("the Public Records Act exempts only those records that are provided by statutory law to be confidential or which are expressly exempted by general or special law"); *News-Press Publishing Co. v. Gadd*, 388 So. 2d 276, 278 (Fla. 2d DCA 1980) ("all documents falling within the scope of the Act are subject to public disclosure unless specifically exempted by an act of our Legislature. . . Absent a statutory exemption, a court is not free to consider public policy questions regarding the relative significance of the public's interest in disclosure and the damage to an individual or institution resulting from such disclosure").

17. Section 119.071(2)(c)(1), Florida Statutes, provides an exemption for "active criminal investigative information," however, it is "not a broad exemption for all police records regarding unsolved crimes." *The Mobile Press Register, Inc. v. Witt*, 4 Fla. L. Weekly Supp. 159a (Fla. Cir. Ct. 1996) (ordering release of police department's records of investigation of murder of Adam Walsh that occurred 14 years earlier); *cf. Christy v. Palm Beach County Sheriff's Office*, 698 So. 2d 1365 (4th DCA 1997) (reversing trial court's denial of petition for release of records related to arrest and conviction 13 years earlier and acknowledging that exemptions must be narrowly construed and "this exemption is not intended to prevent disclosure

of criminal files forever.")

18. Section 119.011(3)(d)(2) provides that criminal investigative information is considered "active" if "it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future." Fla. Stat. § 119.011(3)(d)(2). *Cf. Florida Freedom Newspapers, Inc. v. Dempsey*, 478 So. 2d 1128 (Fla. 1st DCA 1985) (denying request for public records for investigation that had been in progress only four and a half months).

19. The Department has the burden of proving its entitlement to the exemption under Section 119.071(2)(c)(1) and it has failed to meet its burden.

COUNT I

PETITION FOR WRIT OF MANDAMUS

20. CNN incorporates by reference the allegations contained in paragraphs 1 through 19 above.

21. The Department failed to make the public records available.

22. The Department's refusal to allow access to the requested public records was a refusal to perform an official duty in violation of Section 119.07, Florida Statutes.

23. As such, a Writ of Mandamus is the appropriate remedy to compel the Department to perform the specific duty of permitting the inspection, examination, and copying of the requested record by any person desiring to do so, at reasonable times, under reasonable conditions, pursuant to Section 119.07, Florida Statutes, and awarding attorney's fees for enforcement the statute. *See, e.g., Downs v. Austin*, 522 So. 2d 931, 932-35 (Fla. 1st DCA 1988) (directing circuit court to enter writ of mandamus compelling disclosure of public records); *City of Gainesville v. State ex rel. Int'l Ass'n of Firefighters, Local 2157*, 298 So. 2d 478, 479-80 (Fla. 1st DCA 1974) (affirming circuit court's entry of writ of mandamus requiring release of public

records).

24. CNN had a clear legal right to insist upon the performance of the Department's ministerial and nondiscretionary duty to permit inspection of public records. *See, e.g., Mills v. Doyle*, 407 So. 2d 348 (Fla. 4th DCA 1981); *VonStephens v. Score Board of Sarasota County*, 338 So. 2d 890 (Fla. 2nd DCA 1976).

25. CNN has retained the undersigned counsel, who are entitled to reasonable attorneys' fees pursuant to § 119.12, Florida Statutes.

WHEREFORE, CNN requests that this Court issue a Writ of Mandamus commanding that:

- a. The Department immediately permit the inspection, examination and copying of the photographs from the Shooting Incident;
- b. The Department pay CNN its reasonable costs and attorneys' fees; and
- c. CNN receive such further relief as the Court may deem just and proper.

COUNT II

COMPLAINT FOR DECLARATORY JUDGMENT

26. Alternatively, CNN seeks a declaratory judgment that CNN has the right to inspect and copy the requested records under Section 119.07(1)(a), Florida Statutes.

27. CNN incorporates by reference the allegations contained in paragraphs 1 through 19, as if fully set forth herein.

28. The Department failed to make the public records available and has not met its burden of proving its entitlement to an exemption under Section 119.07(2)(c)(1).

29. The Department's refusal to allow access to the requested public records violated Section 119.07, Florida Statutes.

30. CNN is interested in its rights under the Public Records Act, as well as the

Department's obligations as the custodian of records. A dispute exists about those rights and obligations, and CNN seeks a declaration of its rights under the Public Records Act.

31. CNN has retained the undersigned counsel, who are entitled to reasonable attorneys' fees pursuant to Section 119.12, Florida Statutes.

WHEREFORE, CNN seeks, pursuant to Chapter 86, Florida Statutes, a declaration by this Court that:

- a. The Department unlawfully refused to release the requested records;
- b. CNN is entitled to an award of reasonable attorneys' fees and costs incurred in this action as provided in § 119.12, Florida Statutes; and
- c. CNN is entitled to such further relief as the Court may deem just and proper.

DATED: February 26, 2014.

Respectfully submitted,

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