

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
6<sup>TH</sup> DIVISION

**RUSTY ROTHWELL,  
KIRK McCAULEY,  
JOHN MICHAEL TRENT, and  
DAVID MATTOX**

**PLANTIFFS**

vs.

**CASE NO. 60CV-21-5483**

**THE CITY OF LITTLE ROCK,  
MAYOR FRANK SCOTT and  
CITY MANAGER BRUCE MOORE**

**DEFENDANTS**

**ORDER**

This matter, which concerns an issue raised pursuant to the Arkansas Freedom of Information Act (“the AFOIA”) – Ark. Code Ann. §§ 25-19-101 to -112 – was set for an expedited hearing pursuant to AFOIA § 25-19-107 (b). The plaintiffs (“Rothwell”) appear in person, and through their counsel Robert A. Newcomb, Esquire. The defendants (“the City”) appear through their counsel, Thomas M. Carpenter. The witness Dr. Loretta Cochran appeared with her counsel, Clay McCall.

At issue is whether the City failed to comply with the AFOIA by not providing public records requested on August, 30, 2021. The City acknowledged receipt of the AFOIA request, but has yet to produce any response. The requested public records are:

**Requests Nos. 1 & 2:**

A copy of any transcript, any interview of Chief Keith Humphrey, or Assistant Chief Crystal Haskins-Young, conducted by Dr. Loretta Cochran that discussed the actions as an employee of the City of each of the following individuals:

- (a) David Mattox;
- (b) Russel King;

- (c) Rusty Rothwell;
- (d) John Michael Trent;
- (e) Christopher “Kirk” McCauley;
- (f) Brittany Gunn;
- (g) Crystal Young-Haskins;
- (h) Hayward Finks.

**Request No. 3:**

Any notes made by Dr. Loretta Cochran while interviewing Chief Keith Humphrey concerning the actions as an employee of the City of each of the following individuals:

- (a) David Mattox;
- (b) Russel King;
- (c) Rusty Rothwell;
- (d) John Michael Trent;
- (e) Christopher “Kirk” McCauley;
- (f) Brittany Gunn;
- (g) Crystal Young-Haskins;
- (h) Hayward Finks.

**Requests No. 4:**

A copy of any email between Dr. Loretta Cochran and Stacey Witherell between January 1 to September 1, 2021.

**Requests Nos. 5, 6, 7, 8, & 9:**

A copy of any email between Dr. Loretta Cochran and Stacey Witherell, Dr. Shella Atlas, Bruce Moore, Mayor Frank Scott, or any City employee working in the office of Mayor Scott, concerning the discipline of David Mattox.

**Request No. 10:**

Any documents sent by Lieutenant James Sloan to the Federal Bureau of Investigation mentioning any of the following individuals:

- (a) David Mattox;
- (b) Russel King;
- (c) Rusty Rothwell;
- (d) John Michael Trent;
- (e) Christopher "Kirk" McCauley;

**Request No. 11:**

Any documents generated by Bruce Moore to any City elected official or employee of the office of Mayor Frank Scott between March 1 to September 1, 2021, where the subject of the document was any of the following individuals:

- (a) David Mattox;
- (b) Russel King;
- (c) Rusty Rothwell;
- (d) John Michael Trent;
- (e) Christopher "Kirk" McCauley.

~~The City argues that the records requested deal with an employee evaluation of another City employee. Further, whether such documents, particularly those compiled by Dr. Loretta Cochran, are a proper basis for this action since they were subject to AFOIA litigation in *Rusty Rothwell, Kirk McCauley, John Michael Trent and David Mattox v. The City of Little Rock*, No. CV60-21-4498, Pulaski Circuit [12<sup>th</sup>], and to the extent deemed appropriate were provided pursuant to an order from that Court issued on August 5, 2021. In response, Rothwell noted that since that order was entered, plaintiff David Mattox had suffered an adverse employment action and these materials were needed for his appeal to the Little Rock Civil Service Commission. The City noted that the administrative process of that appeal is not complete, and~~

(910)

until it is, records to all by Mr. Mattox are exempt from disclosure pursuant to AFOIA § 25-19-105 (c). (DAP)

After discussion and arguments of counsel, the Court makes the following findings of fact and conclusions of law:

### FINDINGS OF FACT

1. An FOIA request for the noted documents and materials was made by the representative of the individual plaintiffs – Robert Newcomb – on August 30, 2021;

2. The City has not responded to the request as of the date of this hearing except to acknowledge its receipt;

3. For purposes of this litigation, Robert Newcomb does not represent Rusty King, Brittany Gunn, Crystal Young-Harris, nor Hayward Finks;

4. An adverse employment action has been taken against David Mattox by the City, but it has not completed the administrative process;

5. Dr. Loretta Cochran was doing work for the City when she conducted the interviews at issue in this matter, and did other work, as part of an employee evaluation of another employee;

6. ~~Transcripts of the named plaintiffs, although taken during an employee evaluation of another City employee, are personnel or evaluation records;~~ (DAP)

6. There has been no conclusion to the administrative process of the employee evaluation of the other City employee in this matter;

7. An adverse employment action has been taken by the City against the plaintiff David Mattox;

8. There has been no conclusion to the administrative process of the adverse employment action against plaintiff David Mattox at the time of this hearing.

## CONCLUSIONS OF LAW

1. The AFOIA is broadly written, and questions as to the disclosure of public records should be decided in favor of disclosure if the public records are not otherwise exempt from disclosure.

2. The ruling in *Rothwell, et al, v. The City of Little Rock*, No. 60CV-21-4498, Pulaski Circuit [12<sup>th</sup>], issued on August 5, 2021, does not control this Court in this matter.

3. Any transcript of ~~Chief Humphrey or Assistant Chief Young-Haskins~~ <sup>FFS</sup> <sup>(RF)</sup> of interviews <sup>OF THE FFS</sup> taken by Dr. Loretta Cochran as part of an employee evaluation of another City employee which refer to ~~Rusty Rothwell, Kirk McCauley, John Michael Trent, or David Mattox~~ <sup>(RF)</sup> shall be released pursuant to Ark. Code Ann. § 25-19-105 (c) (2) by the close of business on Friday, September 10, 2021. Any unredacted transcript provided to Mr. Newcomb shall not be shared with his clients or anyone else. A redacted version is to be provided by the close of business on Tuesday, September 14, 2021, which Mr. Newcomb can share with his clients only.

4. Based upon Mr. Newcomb's withdrawal of the request, the plaintiffs are not entitled to any notes of Dr. Loretta Cochran taken during her interviews with Rusty Rothwell, Kirk McCauley, John Michael Trent If transcripts exist of the interviews by Dr. Loretta Cochran of Rusty Rothwell, Kirk McCauley, John Michael Trent or David Mattox.

5. The plaintiffs withdrew their request pursuant to the Arkansas Freedom of Information Act for email communications between Dr. Loretta Cochran and Stacey Witherell between January 1 to September 1, 2021, so the City is not required to provide any such documents.

6. Email from Dr. Loretta Cochran to Stacey Witherell about an adverse employment action against David Mattox is to be provided to Mr. Robert Newcomb by

the close of business on Monday, September 13, 2021, pursuant to Ark. Code Ann. § 25-19-105 (c) (2).

7. Email from Dr. Loretta Cochran to Dr. Shella Atlas about an adverse employment action against David Mattox, is to be provided to Mr. Robert Newcomb by the close of business on Monday, September 13, 2021, pursuant to Ark. Code Ann. § 25-19-105 (c) (2).

8. Email from Dr. Loretta Cochran to Bruce Moore about an adverse employment action against David Mattox, is to be provided to Mr. Robert Newcomb by the close of business on Monday, September 13, 2021, pursuant to Ark. Code Ann. § 25-19-105 (c) (2).

9. Email from Dr. Loretta Cochran to Mayor Frank Scott about an adverse employment action against David Mattox, is to be provided to Mr. Robert Newcomb by the close of business on Monday, September 13, 2021, pursuant to Ark. Code Ann. § 25-19-105 (c) (2).

10. Email from Dr. Loretta Cochran to a City employee working in the office of Mayor Frank Scott about an adverse employment action against David Mattox, is to be provided to Mr. Robert Newcomb by the close of business on Monday, September 13, 2021, pursuant to Ark. Code Ann. § 25-19-105 (c) (2).


11. Any document sent by Lieutenant James Sloan to the Federal Bureau of Investigation, if any exists, about an adverse employment action against David Mattox is to be provided to Mr. Robert Newcomb by the close of business on Monday, September 13, 2021, pursuant to Ark. Code Ann. § 25-19-105 (c) (2).

12. Any document sent by Bruce Moore to any City of Little Rock elected official or employee of the office of Mayor Frank Scott generated between March 1 to September 1, 2021, in which the subject of the document relates to Rusty Rothwell, Kirk McCauley,

**John Michael Trent, or David Mattox is to be released to Mr. Robert Newcomb by the close of business on Monday, September 13, 2021, pursuant to Ark. Code Ann. § 25-19-105 (c) (2).**

**IT IS THEREFORE, CONSIDERED, ORDERED AND ADJUDGED, that the public records so identified in paragraphs 3, 6, 7, 8, 9, 10, 11, and 12, of the Conclusions of Law in this Order are to be dealt with as set forth in those paragraphs; because of the sensitive nature of employee evaluation materials, counsel and the parties to this litigation are prohibited from any discussion or publication of the items to be released pursuant to this Order; if the plaintiffs believe that it should be permissible to use any of the items to be released pursuant to this Order in an administrative or other hearing, they are to notify opposing counsel and the Court promptly so the issue can be considered, and an appropriate order can be entered as to whether such documents are subject to release.**

**IT IS SO ORDERED this 10<sup>th</sup> day of September, 2021.**

 9/13/21  
\_\_\_\_\_  
**TIMOTHY DAVIS FOX**  
**CIRCUIT JUDGE**

**Prepared by:**

**Thomas M. Carpenter, 77024  
Office of the City Attorney  
500 West Markham, Ste. 310  
Little Rock, Arkansas**