

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

DIVISION

MATTHEW CAMPBELL

PLAINTIFF

v.

Case No. 60CV-22-_____

CITY OF LITTLE ROCK

DEFENDANT

APPEAL FROM DENIAL OF RIGHTS UNDER
THE ARKANSAS FREEDOM OF INFORMATION ACT

1. This case is an appeal from denial of rights under the Arkansas Freedom of Information Act (“AFOIA”), pursuant to Arkansas Code Annotated §§ 25-19-101 through -112.

Parties, Jurisdiction, and Venue

2. Plaintiff is an adult citizen of the State of Arkansas, county of Pulaski, and an attorney in good standing with the Bar of Arkansas, and he brings this appeal as a matter of right under Ark. Code Ann. § 25-19-107, as he requested specific public records from the City of Little Rock, and the defendant both actively and constructively denied Plaintiff’s request by refusing to provide the records even after being asked multiple times and being instructed by the City Attorney to provide the records as requested.
3. Defendant is a municipal corporation, organized under the laws of the State of Arkansas and tasked with providing, upon request, copies of certain public records as that term is defined in the Arkansas Freedom of Information Act (“AFOIA”), subject to any exclusions in Ark. Code Ann. § 25-19-105(b) and/or limitations in Ark. Code Ann. § 25-19-105(c).

4. This Court has personal and subject-matter jurisdiction pursuant to Ark. Code Ann. § 25-19-107(a).
5. Venue lies in this Court because Plaintiff and Defendants reside in Pulaski County, and the events leading to this lawsuit occurred entirely within Pulaski County. *See* Ark. Code Ann. § 25-19-107(a).

Factual Background

6. This case is based on three distinct AFOIA requests that Plaintiff made to the City of Little Rock between September 8 and September 16, 2022.

The First Request

7. The first AFOIA request at issue was made on September 8 via email to the City of Little Rock, and it sought electronic copies, either emailed to the plaintiff or provided via cloud storage, of “All monthly cell phone statements for any phone used by Frank Scott Jr. from 1/1/2019 to present” (hereinafter “the Frank Scott request”). *See* Exhibit A.
8. This request was confirmed in writing by the City of Little Rock’s FOIA compliance office on September 8, 2022, at 3:02pm. *See* Exhibit B.
9. On September 20, when no records responsive to this request had been received and there had been no further communications regarding the request, Plaintiff again emailed the defendant, noting that it had been 12 days and that no records had been produced. City Attorney Tom Carpenter was copied on this email. *See* Exhibit C.
10. Mr. Carpenter responded a few minutes later, noting that the records were subject to the AFOIA and should have already been produced, opining on the possible content of the

records, and stating that he would try to determine why no response had been sent. *See* Exhibit D.

11. When no further communications were received regarding these records, Plaintiff sent an email on September 21 noting the lack of production and instructing the defendant to provide the requested records by the morning of September 22 or suit would be filed. *See* Exhibit E.
12. As of the date of filing this suit, no records responsive to the Frank Scott request have been provided, despite two weeks having passed since the request was made and despite the city attorney specifically informing the defendant that the records were subject to the AFOIA and should be produced.

The Second Request

13. The second AFOIA request relevant to this case was made on September 9 via email to the City of Little Rock, and it sought electronic copies, either emailed to the plaintiff or provided via cloud storage, of “All emails received or sent by lrsmallbusiness@littlerock.gov” (hereinafter “the Business Email request”). *See* Exhibit F.
14. This request was confirmed in writing by the City of Little Rock’s FOIA compliance office on September 12, 2022, at 8:13am. *See* Exhibit G.
15. When no records had been received in response to this request by September 20, Plaintiff emailed the defendant, noting that the latter had been in receipt of the Business Email request since at least September 12, that no records had been provided, no requests for extension of time had been made, and no communications regarding this request had been received since the lone confirmation email on September 12. *See* Exhibit H.

16. No one associated with the defendant responded to the September 20 email regarding the Business Email request. Accordingly, Plaintiff emailed again on September 21, noting the lack of communication or response and giving the defendant until 9am on September 22 to provide the records or suit would be filed. *See Exhibit I.*
17. City Attorney Tom Carpenter responded to Plaintiff's September 21 email, writing to the defendant, "I need an answer to Mr. Campbell's inquiry. Why have these records not been sent? It would seem relatively simple to copy the emails to the stated email address and forward the information." *See Exhibit J.*
18. As of the date of filing this suit, no records responsive to the Business Email request have been provided, despite at least ten days having elapsed since the defendant received the request and despite the defendant's own attorney instructing them to provide the records as requested.

The Third Request

19. The final request at issue here was made on September 16 at 2:53pm via Twitter to @CityLittleRock and @kendrakpruitt, and it requested "all applications, licenses, permits, agreements, communications (emails, text, etc.), and any other written records related to" the Food Truck Friday event at City Hall on September 16, 2022 (hereinafter "the Food Truck request"). *See Exhibit K.*
20. Ms. Pruitt is Chief of Staff for Mayor Frank Scott, and @kendrakpruitt is the Twitter account that she uses for both personal and official business.

21. The @CityLittleRock Twitter account is the verified official Twitter account of the City of Little Rock, and it is operated and maintained solely by the defendant for official city business.
22. No records responsive to this request have been received as of the date of filing this suit, and neither Ms. Pruitt nor the defendant has contacted Plaintiff regarding the Food Truck request to ask for an extension of time, to explain why the records had not been produced, or for any other purpose.
23. To the extent that Ms. Pruitt or the defendant may believe that this was not a valid AFOIA request because it came via Twitter, they are incredibly mistaken, and their failure to provide the records as request cannot be excused simply because the request was made via Twitter rather than by email.

Relevant Legal Standards

24. For over fifty years, it has been a well-settled truth that the AFOIA was “passed wholly in the public interest and is to be interpreted liberally.” *Laman v. McCord*, 245 Ark. 401, 405, 432 S.W.2d 753, 755 (1968).
25. That liberal interpretation means that, “whenever the legislature fails to specify that any records in the public domain are to be excluded from inspection...then privacy must yield to openness and secrecy to the public’s right to know the status of its own affairs.” *Ragland v. Yeargan*, 288 Ark. 81, 85, 702 S.W.2d 23, 25 (1986).
26. Furthermore, even the express AFOIA exemptions found in Ark. Code Ann. § 25-19-105 are to be narrowly construed. *See Hengel v. City of Pine Bluff*, 307 Ark. 457, 821 S.W.2d 761

(1991); *see also Young v. Rice*, 308 Ark. 593, 826 S.W.2d 252 (1992) (holding that AFOIA exemptions are to be narrowly construed “in a manner that favors disclosure”).

27. Because there is a presumption in favor of disclosure, an entity or custodian claiming an exemption under the AFOIA must carry the burden of establishing that the exemption applies and justifying the nondisclosure of information. *See, e.g., Orsini v. State*, 340 Ark. 665, 13 S.W.3d 167 (2000).
28. Under the AFOIA, the records requested by Plaintiff were “public records” under Ark. Code Ann. § 25-19-103(7)(A), and the defendant, through the Little Rock City Attorney, has conceded this fact with respect to the Frank Scott request and the Business Email request. *See Exhibits D & J*.
29. When an AFOIA request is made, the custodian must do one of two things:
 - a. Provide the records more or less immediately, or
 - b. If the records are in active use or storage, and therefore unavailable at the time the request is made, certify this fact in writing and state a date and time within three (3) business days when the records will be provided. *See Ark. Code Ann. § 25-19-105(e)*.
30. The format used when making an AFOIA request is up to the requestor, and a public entity may not require a requestor to use a certain format such as only accepting requests that are sent to a specific email address. *See, e.g., John Watkins, et al., “The Arkansas Freedom of Information Act (5th ed.)”* at 267; *see also Pulaski County Special Sch. Dist. v. Delaney*, 2019 Ark. App. 210, 575 S.W.3d 420 (“The AFOIA does not give the custodian of records the power to pick and choose which requests it may comply with”).

31. Where the custodian has the ability to produce electronic copies of records and the requestor specifies that he or she wants the records to be provided electronically, the custodian must provide the records in that format. *See Delaney*, 2019 Ark. App. 210, at 6, 575 S.W.3d at 424.
32. Plaintiff clearly and explicitly requested electronic copies, and his requests were “sufficiently specific to enable the custodian to locate the records with reasonable effort.” *See Daugherty v. Jacksonville Police Dep’t*, 2012 Ark. 264, 411 S.W.3d 196.
33. The Arkansas Supreme Court has held that the test for whether a failure to provide public records under the AFOIA was done in bad faith is whether the Defendant “was ‘substantially justified’ in withholding the records.” *Harris v. City of Ft. Smith*, 366 Ark. 277, 234 S.W.3d 875 (2006).

Claim 1: Violation of the AFOIA vis-à-vis the Frank Scott Request

34. It is inarguable that Plaintiff clearly and unambiguously requested copies of monthly phone statements for all telephones used by Little Rock Mayor Frank Scott Jr. from 1/1/2019 to present. *See Exhibit A*.
35. The records requested are “public records” as that term is used in the AFOIA.
36. It is similarly indisputable that the defendant did not properly respond to the Frank Scott request when it was received inasmuch as the defendant did not either provide the records or certify in writing that the records were in active use or storage, and therefore unavailable, and state a date and time within three (3) business days when the records would be provided. *See Ark. Code Ann. § 25-19-105(e)*. This failure is, in and of itself, a violation of the AFOIA.

37. When pressed about the records, the defendant still failed to provide them, even after City Attorney Tom Carpenter acknowledged that they should have been provided, after Carpenter said he would find out why the records had not been provided, and after the defendant was told in no uncertain terms that this lawsuit would be forthcoming if the records were not provided.
38. Worse still, the defendant has not even given the slightest objection or exemption that might apply that could possibly justify the failure to provide the records; rather, they have remained radio silent, even when given a chance to prevent this suit, and have acted as if they would rather have the city get sued than provide Mayor Frank Scott Jr.'s monthly phone bills.
39. Because they have offered no excuse for the non-production, and because no exemption applies which would otherwise excuse the non-production, Defendant cannot possibly have acted in good faith in denying Plaintiff's request, as there is no substantial justification that could possibly justify refusing to turn over public records when even the city's own attorney says that the records must be turned over.
40. Defendant's failure to provide public records in response to the Frank Scott request is a clear violation of the AFOIA, and they should be ordered to provide the records immediately and to pay Plaintiff's reasonable attorney fees and costs pursuant to Ark. Code Ann. § 25-19-107(d)(1).

Claim 2: Violation of the AFOIA vis-à-vis the Business Email Request

41. Plaintiff clearly and unambiguously requested all emails sent or received by the email account lrsmallbusiness@littlerock.gov. *See* Exhibit F.

42. These are public records and Plaintiff is clearly entitled to them in the format requested, as conceded by City Attorney Tom Carpenter. *See* Exhibit J.
43. The defendant did not properly respond to the Business Email request when it was received inasmuch as the defendant did not either provide the records or certify in writing that the records were in active use or storage, and therefore unavailable, and state a date and time within three (3) business days when the records would be provided. *See* Ark. Code Ann. § 25-19-105(e). This failure is, in and of itself, a violation of the AFOIA.
44. As with the prior request above, the defendant has not even given the slightest objection or exemption that might apply that could possibly justify the failure to provide the records in response to the Business Email request. Rather, they have remained silent, even when given a chance to prevent this suit.
45. Because they have offered no excuse for the non-production, and because no exemption applies which would otherwise excuse the non-production, Defendant cannot possibly have acted in good faith in denying Plaintiff's request, as there is no substantial justification that could possibly justify refusing to turn over public records when even the city's own attorney says that the records must be turned over.
46. The utter failure of the defendant to provide the requested records within the time constraints and within the strictures of the AFOIA is a clear violation of the AFOIA, and they should be ordered to provide the records immediately and to pay Plaintiff's reasonable attorney fees and costs pursuant to Ark. Code Ann. § 25-19-107(d)(1).

Claim 3: Violation of the AFOIA vis-à-vis the Food Truck Request

47. The Arkansas Attorney General, the leading commentators on the AFOIA, and our

appellate court have all stated in no uncertain terms that an entity that is subject to the AFOIA may not pick and choose which requests to respond to, nor may they require that a requestor make his request in a certain format or medium. *See Watkins, et al., supra*, at 267; *see also Delaney*, 2019 Ark. App. 210, 575 S.W.3d 420.

48. Plaintiff's use of Twitter to make the Food Truck request does not make that request any less valid or any less covered by the AFOIA than if Plaintiff had made the request via email to the city as with the two prior requests above.
49. Both Kendra Pruitt, as a high-ranking employee of the City of Little Rock, and the defendant generally were actually or constructively aware of the Food Truck request inasmuch as the request was made in a reply to a tweet sent by Ms. Pruitt in the middle of her workday on September 16, Ms. Pruitt's tweet tagged @CityLittleRock, and neither Ms. Pruitt nor the defendant have Plaintiff's Twitter account blocked.
50. The complete failure of Ms. Pruitt or the defendant to respond to the Food Truck request in any way is a violation of the AFOIA.
51. The failure of the defendant to provide the records requested in the Food Truck request is also a clear-cut violation of the AFOIA, and the defendant should be ordered to provide those records immediately and to pay Plaintiff's reasonable attorney's fees and costs pursuant to Ark. Code Ann. § 25-19-107(d)(1).

Conclusion

52. Plaintiff does not waive the 7-day provision of the AFOIA, which states, "Upon written application of the person denied the rights provided for in this chapter, or any interested party, it shall be mandatory upon the circuit court having jurisdiction to fix and assess a day

the petition is to be heard within seven (7) days of the date of the application of the petition, and to hear and determine the case. Ark. Code Ann. § 25-19-107(b).

53. Plaintiff hereby asks that this Court set a date and time within seven (7) days of the filing of this action at which time the matter can be heard and decided.

54. Considering the defendant has made no objections to any of the three requests, has conceded that at least two of the requests are for public records to which Plaintiff is unquestionably entitled, and has offered absolutely nothing to justify their complete non-compliance with the AFOIA, Plaintiff does not think that a hearing in this matter will take more than a couple of hours.

55. Mandating the attendance of the defendant to a hearing within seven (7) days of this filing does not run afoul of the Arkansas Rules of Civil Procedure, as Rule 81 clearly states, “These rules shall apply to all civil proceedings cognizable in the circuit courts of this state *except in those instances where a statute which creates a right, remedy or proceeding specifically provides a different procedure*, in which event the procedure so specified shall apply.” Ark. R. Civ. P. 81(a).

56. The AFOIA specifically provides a different procedure—namely, that the case be scheduled within seven days—within the meaning of Rule 81.

WHEREFORE, based on the foregoing, the Plaintiff prays that this Court will set a date and time for this matter to be heard, will hear the matter, will enter an order directing the defendant to provide all of the requested records immediately (or within such time as the Court finds acceptable), and will order the defendant to pay Plaintiff’s reasonable attorney’s fees and costs associated with the bringing of this action.

Respectfully submitted,

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