

FAX

**GANNETT RIVER STATES
PUBLISHING CORPORATION d/b/a
DAILY ADVERTISER and THE
CURRENT MEDIA, INC.**

15TH JUDICIAL DISTRICT COURT

VERSUS

LAFAYETTE PARISH, LOUISIANA

**LAFAYETTE CITY-PARISH
CONSOLIDATED GOVERNMENT,
LAFAYETTE POLICE DEPARTMENT,
and MAJOR MONTE POTIER – Interim Chief**

DOCKET NO: _____

**PETITION FOR DECLARATORY JUDGMENT, MANDAMUS, INJUNCTION,
ATTORNEY FEES, COSTS AND PENALTIES**

NOW INTO COURT comes Gannett River States Publishing Corporation d/b/a Daily Advertiser ("The Advertiser") and The Current Media, Inc. ("The Current"), appearing through undersigned counsel, in this action to enforce the duties and obligations required of public record custodians pursuant to the Louisiana Public Records Law. *LRS 44:1, et seq.*

Parties and Background

1.

The Advertiser is a corporation registered to do business in the state of Louisiana. The Current is a Louisiana non-profit corporation.

2.

Lafayette City-Parish Consolidated Government (LCG) is a "public body" as defined by the Louisiana Public Records Law. *LRS 44:1(A)(1)*. As a department of LCG, the Lafayette Police Department is likewise a public body. Finally, Major Monte Potier, Interim Chief of Police, is named in this suit insofar as he is the custodian of the records being sought.

3.

On January 20, 2022, Sgt. Wayne Griffin was terminated from his position within the Lafayette Police Department following an internal investigation regarding allegations of sexual harassment.

Actions of The Current

4.

On January 23, 2022, a duly authorized representative of The Current made a public records request to LCG seeking "any written or digital communication to Sgt. Wayne Griffin notifying him of his termination from Lafayette Police Department." See **Exhibit 1**.

5.

On January 26, 2022, a representative of LCG responded with a boilerplate response informing that due to "the volume of the records which were requested" and the "need to locate those records," LCG would notify The Current within 30 days whether or not any records responsive to its request had been identified. See **Exhibit 1**.

6.

That same day, The Current wrote back confirming that it was "requesting ONE record" and that LCG's "form response is not applicable." See **Exhibit 1**.

7.

Later that same day, an Assistant City-Parish Attorney responded to The Current to inform that LCG would not be producing any records in response to the request:

LCG has no non-exempt records responsive to your request. After review, the records in question are protected by the right to privacy established by Article 1, Section 5 of the Louisiana Constitution, as applied by *Trahan v. Larivee*, 365 So.2d 294, 300 (La. App. 3 Cir. 1978), writ denied, 366 So.2d 564 (La. 1979) and *East Bank Consolidated Special Service Dist. v. Crossen*, 04-838 (La. App. 5th Cir. 12/28/04), 892 So.2d 666, 670. See **Exhibit 1**.

8.

As of the time of this filing, LCG has still not produced the letter of dismissal addressed to Sgt. Wayne Griffin - despite the existence of said letter being confirmed by Griffin's own attorney in a public statement on January 21, 2022, two days prior to The Current request. See **Exhibit 2**.

9.

In addition, LGC failed to adequately respond to The Current's January 28, 2022 request for the following:

- All sexual harassment allegation complaints filed to Lafayette PD or LCG Human Resources against Sgt. Wayne Griffin from Jan. 1, 2021, to the present.
- The Lafayette Police Department's full Internal Affairs investigative file of sexual harassment complaints and any other complaints against Wayne Griffin.
- LCG Human Resources' full investigative file of sexual harassment complaints and any other complaints against Griffin.
- The full findings of the independent attorney hired to investigate the Oct. 21 sexual harassment or any other complaints against Wayne Griffin.
- Any memos or emails sent to M-P Josh Guillory with the results of any of the aforementioned investigations.
- Any memos or emails from M-P Josh Guillory or Maj. Ponte Potier authorizing the actions that have been taken against Griffin (removal from post as interim chief, return to rank of sergeant, termination).

- All transmittal letters of the findings of any of the above investigations sent out to any persons.
- Any written or digital communication to Sgt. Wayne Griffin notifying him of his termination from the Lafayette Police Department.

Actions of The Daily Advertiser

10.

On January 24, 2022, a duly authorized representative of The Daily Advertiser made a public records request to LCG seeking the following documents related to complaints of any nature regarding Lafayette Police Department employee Wayne Griffin:

- Any records of the initial complaints
- Any records of statements produced during any investigations
- Any records of recommended actions from supervisors, department heads or the mayor-president
- Any records of any formal hearings that were conducted
- Any records of supervisors' findings of fact or conclusions, including internal memos
- Any records of written determinations regarding each complaint
- Any records of settlements reached related to each complaint

See Exhibit 3.

11.

On January 28, 2022, LCG responded to the above request and informed that no records would be produced:

LCG has no non-exempt records responsive to your request. We decline to produce the requested records, to the extent that such records exist, as such documents are not public record pursuant to La. R.S. 44:4.1(B)(26) and 40:2532, as well as Article 1, Section 5 of the Louisiana Constitution, as applied by *Trahan v. Larivee*, 365 So.2d 294, 300 (La. App. 3 Cir. 1978), writ denied, 366 So.2d 564 (La. 1979) and *East Bank Consolidated Special Service Dist. v. Crossen*, 04-838 (La. App. 5th Cir. 12/28/04), 892 So.2d 666, 670.

See Exhibit 4.

12.

Accordingly, The Daily Advertiser and The Current are now forced to file this Petition in order to obtain the requested public records as required by the Louisiana Public Records Law. *LRS 44:1, et seq.*

Public Records

13.

The public records doctrine, enshrined in the Louisiana Constitution (*LA. Const. Art. XII, Sec. 3*) and codified in the Louisiana Revised Statutes as Title 44, is a fundamental, constitutional

right of the public. Its rule is that a document in the custody of a public body is a public record unless there is a "specific and unequivocal" exception provided in the Louisiana Constitution or in Title 44 of the Louisiana Revised Statutes. *LRS 44:31(B); Title Research Corp. v. Rausch*, 450 So.2d 933 (La. 1984).

14.

Any doubt as to the public's right of access to records must be resolved in the favor of the public. *Landis v. Moreau*, 779 So.2d 691, 2000-1157 (La. 2/21/01).

15.

The burden of showing that a public record is not subject to inspection, copying, or reproduction rests with the custodian of the record. *LRS 44(B)(3); Hilliard v. Litchfield*, 822 So.2d 743, 2001-1987 (La.App. 1st Cir. 6/21/02).

16.

The enforcement provision of the Louisiana Public Records Law authorizes the institution of proceeding for issuance of a writ of mandamus, injunctive or declaratory relief and that such proceedings "shall be tried by preference and in a summary manner." *LRS 44:35(C)*.

17.

Attorney fees and all costs of litigation **shall be awarded** to a person who prevails in a lawsuit such as this together with all applicable penalties or other relief provided by that statute. *LRS 44:35(D)(1)*.

18.

The custodian has unreasonably or arbitrarily failed to respond to the request as required by *LRS 44:32* triggering an award for damages and civil penalties not to exceed one hundred dollars per day, exclusive of Saturdays, Sundays, and legal public holidays for each such day of such failure to give notification. *LRS 44:35(E)(1)*.

Claims

19.

With this Petition, Plaintiffs seek to address two issues regarding LCG's handling and responses to public records request.

20.

First and more broadly, as evidenced by LCG's response to The Current's request seeking a single document (Exhibit 1), LCG has a practice of providing generic responses to public records,

granting itself unilateral and unauthorized extensions of time up to thirty (30) days to comply with the statutory mandate of five (5) days.

21.

The second issue is that the jurisprudence and statutes cited by LCG in response to the records requests regarding Sgt. Wayne Griffin are inapplicable and easily distinguished from the facts and circumstances at bar.

22.

A document in the custody of a public body is a public record unless there is a "specific and unequivocal" exception provided in the Louisiana Constitution or in Title 44 of the Louisiana Revised Statutes. *LRS 44:31(B)*; *Title Research Corp. v. Rausch*, 450 So.2d 933 (La. 1984).

23.

LCG cites jurisprudence to support its wholesale denial of any of the requested records rather than providing responses with appropriate redactions. That response runs counter to the Louisiana Supreme Court holdings in *Copeland v. Copeland*. See *Copeland v. Copeland*, 06-1023 (La.6/2/06), 930 So.2d 940 and *Copeland v. Copeland*, 2007-0177, p. 2 (La. 10/16/07); 966 So.2d 1041.

24.

LCG cites *Trahan v. Larivee*, 365 So.2d 294, 296 (La. Ct. App.1978), *writ denied*, 366 So.2d 564 (La.1979) in support of its wholesale refusal to provide any of the Griffin records ignoring the *Trahan* two-prong analysis: 1) are the records public, and 2) was there a reasonable expectation of privacy.

25.

LCG also cites La. R.S. 40:2532 which provides as follows:

No person, agency, or department shall release to the news media, press or any other public information agency, a law enforcement officer's home address, photograph, or any information that may be deemed otherwise confidential, without the express written consent of the law enforcement officer, with respect to an investigation of the law enforcement officer.

La. Rev. Stat. Ann. § 40:2532

26.

City of Baton Rouge/Par. of E. Baton Rouge v. Capital City Press, L.L.C., 2007-1088, p. 4 (La.App. 1 Cir. 10/10/08); 4 So.3d 807, 810, *writ dismissed sub nom*, involved a newspaper seeking records regarding the investigation of city police officers accused by fellow law

enforcement officers of brutality and excessive force. The Baton Rouge Police Department refused to produce any such records citing the broad provision of La. R.S. 40:2532. The Louisiana First Circuit reversed the trial court and held that the records regarding the internal investigation of police officers following complaints of misconduct were not exempt from disclosure on the ground that they were confidential. *Id.* In reaching this conclusion, the First Circuit addressed the competing interests of the public's right to know vs. a public employee's right to privacy:

Addressing the IAD records at issue, we do not find any legitimate reasonable expectations of privacy on behalf of any of the police officers who were investigated. These investigations were not related to private facts; the investigations concerned public employees' alleged improper activities in the workplace. On the other hand, the public has a strong, legitimate interest in disclosure. One of the purposes of the Public Records Act is to insure that public business is subject to public scrutiny. *Henderson v. Bigelow*, 07-1441 at p. 11, 982 So.2d at 948. The public has an interest in learning about the operations of a public agency, the work-related conduct of public employees, in gaining information to evaluate the expenditure of public funds, and in having information openly available to them so that they can be confident in the operation of their government. The public should be ensured that "both the activity of public employees suspected of wrongdoing and the conduct of those public employees who investigate the suspects is open to public scrutiny." *Fincher v. State*, 231 Ga.App. 49, 52-53, 497 S.E.2d 632, 636 (1998) (quoting *Irvin v. Macon Tel. Publishing Co.*, 253 Ga. 43, 45(3), 316 S.E.2d 449 (1984)). It would be an incongruous result to shield from the light of public scrutiny the workings and determinations of a process whose main purpose is to inspire public confidence. See *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester*, 58 Mass.App.Ct. 1, 787 N.E.2d 602, 31 Media L. Rep. 1689 (5/1/03), review denied, 440 Mass. 1103, 795 N.E.2d 574 (2003).

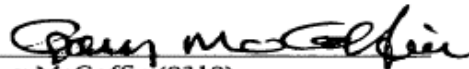
Id. at 821.

WHEREFORE, Gannett River States Publishing Corporation d/b/a Daily Advertiser and The Current Media, Inc. pray for judgment against Lafayette City-Parish Consolidated Government, Lafayette Police Department, and Major Monte Potier as follows:

- 1) That this matter be tried with preference as a summary proceeding.
- 2) A judicial declaration that the documents related to the concluded internal investigation of former Sgt. Wayne Griffin are:
 - A) public records pursuant to the provisions of LRS 44:12.1(A)
 - B) under the control of Major Monte Potier as custodian by virtue of his position as the Acting Chief of the Lafayette Police Department; and
 - C) subject to inspection, copying, or reproduction.
- 3) That mandamus issue compelling the custodian, Major Monte Potier, to immediately produce the requested documents related to the internal investigation of former Sgt. Wayne Griffin.

- 4) That an injunction issue prohibiting the custodian, Major Monte Potier, from the wholesale withholding of all documents related to the internal investigation of former Sgt. Wayne Griffin.
- 5) That there be judgment ordering the Lafayette City-Parish Consolidated Government and/or the Lafayette Police Department to pay all attorney fees and costs incurred by Gannett River States Publishing Corporation d/b/a Daily Advertiser and The Current Media, Inc.; and
- 6) An award of penalties in the amount of \$100.00 per day for the arbitrary and unreasonable withholding of the documents in violation of the Louisiana Public Records Law.

Respectfully submitted,



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