

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA CIVIL ACTION

NEWS-PRESS PUBLISHING CO,
INC.,

*pls add to
1993 SS case*

Petitioner,

vs

CASE NO 92-1193CA-WCM

JOHN McDOUGALL, as duly
elected Sheriff of Lee
County, Florida,

Respondent.

ORDER DENYING WRIT OF MANDAMUS

Petitioner, News-Press Publishing Co., Inc., requests that this Court issue a Writ of Mandamus commanding the Respondent, John McDougall, Sheriff of Lee County, Florida, to permit the Petitioner to inspect a certain criminal investigative file which is in the Respondent's custody and control. The Respondent has replied that said file is exempt from public disclosure pursuant to Chapter 119 of the Florida Statutes (1991). Respondent has alternatively moved to dismiss the Petition for Writ of Mandamus and has also filed a Declaratory Action as a Counterclaim. This Court has jurisdiction.

Upon review of the caselaw and arguments presented, the Court finds that a Writ of Mandamus is the proper remedy if the Petitioner is able to prove the facts alleged in its petition. Therefore, the Court denies the Respondent's Motion to Dismiss the Petition; furthermore, the Court dismisses the Respondent's

Counterclaim for declaratory relief because it is rendered moot by this order.

The parties have stipulated to the following facts:

The Respondent is the duly elected Sheriff of Lee County, Florida, who has custody and control of a file containing criminal investigative data relative to an alleged sexual battery in Lee County in March or April, 1988. Sometime late in 1988, this file became inactive because: (1) the alleged victim, who was the only witness reporting said crime, died from an unrelated cause; and, (2) although the alleged perpetrator was known, a lack of other evidence made it unlikely that there could be an arrest or prosecution in the foreseeable future. No known public inspections of this file took place during its inactive period.

In February, 1992, three teenagers were abducted to a remote area in Lee County where two of them were killed and the other seriously wounded; the alleged perpetrator of the 1988 sexual battery was arrested and charged with these crimes. The Petitioner learned of the 1988 allegations against the accused, and requested that the Respondent permit the Petitioner to inspect and examine the file containing the 1988 investigation data. While admitting that for a period in excess of three years this file was inactive and therefore available for public examination, the Respondent refused to permit the requested inspection claiming that new developments had reactivated the criminal investigation thereby returning the file to active status and, hence, exempt from public view pursuant to Section 119.07(3)(d).

The Petitioner concedes that the investigation of the 1988 sexual battery is once again active, but denies that the file-- which was admittedly available for public inspection upon becoming inactive--can ever reacquire exempt status. To support this position, Petitioner cites Tribune Co. v. Cannella, 458 So.2d 1075 (Fla. 1984) and Tribune Co. v. Public Records, 493 So.2d 480 (Fla.2DCA 1986). But neither of those cases addresses the precise issue posed here: whether an inactive criminal investigation file which has been available for public view can be reactivated so as to become exempt from disclosure under the Public Records Act?

Under the facts and circumstances presented here, the Court must answer that question in the affirmative. The recognized legislative purpose for the exemption of active criminal investigative information is to protect the process whereby the State may develop new leads so as to successfully apprehend and prosecute persons accused of crime. Public Records at page 848; Florida Freedom Newspapers, Inc. v. Dempsey, 478 So.2d 1128 (Fla.1DCA 1985) at page 1131. Fortunately for the Public, new leads have developed in the unresolved sexual battery case of 1988, and this file is once again active. It makes no difference that the file was previously "available" to public examination due to inactivity; the custodian's only proper concern is whether the file is active now. Furthermore, these facts are distinguishable from Downs v. Austin, 522 So.2d 931 (Fla.1DCA 1988) where the State had "gone public" with investigative data at a sentencing hearing; here, fortuitously, no public disclosure of the inactive file occurred. As the Petitioner has conceded

that (1) the 1988 sexual battery case is presently active, and (2) the contents of this file pertain to that active case, this Court concludes that the data in question is exempt from public disclosure per Section 119.07(3)(d), Florida Statutes.

WHEREFORE the Petition for Writ of Mandamus is denied.

DONE AND ORDERED in Fort Myers, Lee County, Florida, this 26th of February, 1992.

A handwritten signature in cursive script, appearing to read "William L. Smith", written over a horizontal line.

Circuit Judge