

**IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA**

**PAMELA LANG, BARBARA BROWN,
AND MICHELLE BARTLEY,**

Plaintiffs,

vs.

CASE NO. CJ-5546

**REEDY CREEK IMPROVEMENT
DISTRICT, and TOM MOSES, as
Records Custodian of Reedy
Creek Improvement District,**

Defendants.

FINAL JUDGMENT FOR WRIT OF MANDAMUS

THIS CAUSE having come before this Court upon the Alternative Writ of Mandamus and Plaintiffs' Motion for Determination of Reasonable Fees, and this Court having heard argument and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

FINDINGS OF FACT

1. On August 8, 1988, Plaintiff Mary Bartley was hired by Reedy Creek Improvement District/Fire Rescue Services ("RCID/FRS") as a firefighter. On December 5, 1988, Plaintiff Pamela Lang was also hired by RCID/FRS as a firefighter. Four months later, on April 17, 1989, Plaintiff Barbara Jean Brown was hired by RCID/FRS as a firefighter.

2. In 1992, the Plaintiffs complained to Reedy Creek Improvement District ("RCID") that co-workers and superiors were discriminating against them because of

their sex. RCID initiated formal internal investigative actions to determine the validity of the claims and to stop any discrimination, including harassment.

3. In December 1992 and January 1993, all three Plaintiffs filed charges of sex discrimination with the Equal Employment Opportunity Commission ("EEOC"). Subsequently, the Plaintiffs all received right-to-sue letters from the EEOC.

4. On January 21, 1994, Plaintiff Pamela Lang ^{CEASED} ~~quit~~ her employment with RCID.

5. Plaintiffs Bartley and Brown remain employed by RCID/FRS.

6. On June 24, 1994, the Plaintiffs filed suit against RCID and Walt Disney World Company in the U.S. District Court for the Middle District of Florida asserting multiple claims and cause of actions based on Title VII, 42 U.S.C. 2000(e), et. seq., the Florida Civil Rights Act of 1992, ch. 760, Florida Statutes, and common law torts.

7. Commencing in February 24, 1994, and continuing through September 26, 1995, the date of this Court's hearing on this matter, the Plaintiffs sent 19 letters to RCID pursuant to Chapter 119, Florida Statutes, requesting the inspection and/or copying of public records. The 19 letters requested over 135 categories of information and records from both RCID and RCID/FRS.

8. The Plaintiffs' cumulative requests demand the inspection and/or copying of a substantial portion of all records retained by RCID.

9. The Plaintiffs' public records requests encompass ^{ES} ~~files and other~~ INFORMATION documents which ^{is} ~~are~~ specifically protected from release and disclosure by §119.07, Fla. Stat., et. seq.

10. While three of the Plaintiffs' public records requests date from 1994, the bulk of these requests were made in July-September 1995. It was not until late August 1995 that the Plaintiffs actively sought RCID's response to the 1994 requests. RCID's subsequent responses to the requests for public records have been within a reasonable time.

11. On August 31, 1995, the Plaintiffs filed their Complaint for Alternative Writ of Mandamus in this Court, alleging that RCID was refusing to produce public records. Also on August 31, 1995, this Court issued an Alternative Writ of Mandamus compelling RCID to respond.

12. On September 20, 1995, RCID filed its Response to the Alternative Writ of Mandamus describing the scope and breadth of the Plaintiffs' requests and the necessary delay for redacting exempt material. Also on September 20, 1995, the Plaintiffs filed a Motion to Determine Reasonable Costs.

13. On September 26, 1995, all interested parties held a hearing on the Alternative Writ of Mandamus and the Determination of Reasonable Costs before this Court, at which time the Plaintiffs also submitted their Response [sic] to Alternative Writ of Mandamus.

Legal Conclusions

14. Section 119.07(1), Florida Statutes states:

(a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or his designee. The custodian shall furnish a copy of or a certified copy of the record upon payment of the fee prescribed by law or, if a fee is not prescribed by law, for duplicated copies of not more

than 14 inches by 8 1/2 inches, upon payment of not more than 15 cents per one-sided copy, and for all other copies, upon payment of the actual cost of duplication of the record. An agency may charge no more than an additional 5 cents for each two-sided copy. For purposes of this section, duplicated copies shall mean new copies produced by duplicating, as defined in s. 283.30. The phrase "actual cost of duplication" means the cost of the material and supplies used to duplicate the record, but it does not include the labor cost or overhead cost associated with such duplication. . . .

(b) If the nature or volume of public records requested to be inspected, examined, or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual costs of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both. "Information technology resources" shall have the same meaning as in s. 282.303(13).

15. Section 119.07(2)(a) states in relevant part:

A person who has custody of a public record and who asserts that an exemption provided in subsection (3) or in a general or special law applies to a particular public record or part of such record shall delete or excise from the record only that portion of the record with respect to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and examination. . . .

16. Section 119.07(3)(a)-(dd) provides exemptions for certain records as enumerated by the following pertinent examples:

(a) All public records which are presently provided by law to be confidential or which are prohibited from being inspected by the public, whether by general or special law, are exempt from the provisions of subsection (1).

(b) All public records referred to in ²s. 624.329(3) and (4), are exempt from the provisions of subsection (1).

(c) Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment are exempt from the provisions of subsection (1). A person who has taken such an examination shall have the right to review his own completed examination.

(k)1 . . . The home addresses, telephone numbers, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from subsection (1). . . .

(n) A public record which was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt from the provisions of subsection (1) until the conclusion of the litigation or adversarial administrative proceedings. This exemption is not waived by the release of such public record to another public employee or officer of the same agency or any person consulted by the agency attorney. When asserting the right to withhold a public record pursuant to this paragraph, the agency shall identify the potential parties to any such criminal or civil litigation or adversarial administrative proceedings. If a court finds that the document or other record has been improperly withheld under this paragraph, the party seeking access to such document or record shall be awarded reasonable attorney's fees and costs in addition to any other remedy ordered by the court.

(o) Sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals are exempt from the provisions of subsection (1) until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.53(5)(a) or within 10 days after bid or proposal opening, whichever is earlier.

(p) In any case in which an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of the power of eminent domain all appraisals, other reports relating to value, offers, and counteroffers must be in writing and are exempt from the provisions of s. 119.01 and subsection (1) until execution of a valid option contract or a written offer to sell which has been conditionally accepted by the agency, at which time the exemption shall expire.

(t) All complaints and other records in the custody of any unit of local government which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services, or the financing of housing shall be exempt from the provisions of subsection (1) until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding. . . .

(x) All information relating to the medical condition or medical status of employees of the state or of a water management district, which is not relevant to the employee's capacity to perform his duties, is exempt from the provisions of subsection (1). Information which is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits. All information which is exempt from subsection (1) pursuant to this paragraph shall be maintained separately from nonexempt employment information.

(z) Any financial statement which an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is confidential and exempt from the provisions of subsection (1). This exemption is subject to the Open Government sunset Review Act in accordance with s. 119.14.

(bb) Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, should identify that officer or employee is

confidential and exempt from the provisions of subsection (1). However, such information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(dd) The social security numbers of all state employees contained in state employment records are exempt from the provisions of subsection (1) and exempt from s. 24(a), Art. 1 of the State Constitution.

17. The Supreme Court of Florida has established that the custodian of public records may delay providing copies of those public records in order to excise exempted portions therein. Tribune Co. V. Cannella, 458 So. 2D 1075 (Fla. 1984).

18. In the instant case, the plaintiffs are entitled to receive the non-exempt materials requested of RCID. Considering the voluminous nature of the Plaintiffs' requests, however, RCID has thus far responded in a timely fashion that is reasonable under the circumstances. See Florida Institutional Legal Services, Inc. V. Florida Department of Corrections, 579 So. 2d 267 (Fla. 1st DCA 1991) (entity's charging for services necessary for producing public records that took over 15 minutes was reasonable due to the cumulative impact of the requests).

19. Furthermore, this Court finds that the content of many of the public records requested necessitates the excising of exempt information as provided by §119.07(3), Fla. Stat. A substantial amount of redaction is necessary due to the nature of the requests involving firefighters and other areas of this governmental entity. See Chapter 119.07(3)(k). Not only must RCID redact firefighter-related materials, but it must also check each record to insure that no other exempt material is released. It is certainly reasonable that checking for exempt material and redacting would take more

than the 10, 20 and 60 day periods the Plaintiffs argued would allow RCID to produce all of the records due to the cumulative impact of the Plaintiffs' 19 requests.

20. Moreover, pursuant to § 119.07(1)(b), a government entity is allowed to charge for the reasonable cost of extensive clerical or supervisory assistance necessary to produce the public records. The Florida legislature established in § 119.07(1)(b) that the cost of producing voluminous public records should not be borne entirely by the taxpayers. In this instance, this Court specifically finds that \$35.00 per hour is a reasonable fee for redaction of exempt materials when special expertise is required for redaction.

FROM THE FOREGOING IT IS ADJUDGED that:

1. Pursuant to §119.07, Fla. Stat., all requested public records which are not exempt shall be produced by the Defendants within a reasonable time.
2. Due to the voluminous amount of records requested in this case and the duplicative nature of these requests, the schedules attached to the Plaintiffs' Response to the Alternative Writ of Mandamus shall be produced by RCID in the following manner:

Schedule A shall be produced within 120 days;

Schedule B shall be produced within 240 days; and

Schedule C shall be produced within 360 days.

3. Pursuant to § 119.07(1), the reasonable costs of duplicating these records shall be paid by the Plaintiffs in the amount of \$.15 per copy produced.

4. Additionally, the Plaintiffs shall pay the Defendants \$35.00 per hour for redaction of exempt material as necessary.

5. Because the Defendants' production of requested public information has been reasonable, the Plaintiffs' request for attorney's fees pursuant to § 119.12, Florida Statutes is denied.

DONE AND ORDERED this 2nd day of OCTOBER, 1995, in Orlando, Orange County, Florida.

GEORGE A. SPRINKLE IV

Circuit Court Judge