

IN THE CIRCUIT COURT OF THE 19TH
JUDICIAL CIRCUIT IN AND FOR
MARTIN COUNTY, FLORIDA.

CASE NO. 91-812 CA

RONALD SALVADORE and
VALERIE JONES,

Plaintiffs,

vs.

CITY OF STUART, FLORIDA,

Defendant.

FINAL JUDGMENT

THIS CAUSE came for Non-jury trial on December 11 and 12, 1991. The court has considered the evidence and argument of counsel and finds as follows:

The plaintiffs, by an Amended Verified Complaint, allege that the defendant, CITY OF STUART, violated the Public Records Act, Chapter 119 of the Florida Statutes by refusing to provide copies of certain city public records. The defendant, in it's Answer, denied that it violated the Public Records Act, and contend that the plaintiff's request for public records was not made in good faith and their requests were unreasonable, ambiguous, and not specific.

FINDINGS OF FACT

The plaintiff, VALERIE JONES, is President of an organization known as Concerned Boaters and the plaintiff, RONALD SALVADORE, is a member of that organization. The defendant, CITY OF STUART, is a municipality and is an agency under Chapter 119 and their municipal records are public subject to certain exemptions

specified by Chapter 119. The City does not claim that any of the records requested by the plaintiffs are exempt from the Public Records Act, Chapter 119.

The City of Stuart is a small city with a population of approximately 12,000 according to the city manager. The city clerk's entire staff includes only three persons, including the city clerk herself. The city has no high-speed tape recorder to make copies of it's city commission minutes and has in the past made copies from the City of Port St. Lucie's high-speed recorder, but this necessitates the clerk traveling to the Port St. Lucie City Hall to use the equipment.

It is obvious from the testimony and evidence that for more than two years there has been an ongoing feud between the city and the Concerned Boaters organization regarding various actions taken by the city.

From the testimony and the newspaper articles in evidence it is obvious that the Concerned Boaters and the City of Stuart officials have considerable animosity towards each other and that Concerned Boaters have been a nuisance to the City of Stuart's government for at least the last two years. The City claims that the Concerned Boaters are fanatics or at least the President is a fanatic and that the requests that are the subject of this lawsuit was a set-up to award attorneys' fees to the plaintiffs. The court finds no substantial proof of this even though the City went to the expense of hiring a private investigator as a mole in the Concerned Boaters organization to obtain evidence against Concerned Boaters.

Even though a public agency may believe that a person or group are

fanatics, harassers or are extremely annoying, the public records are available to all of the citizens of the State of Florida. As the Attorney General states in the Government in Sunshine Manual "the Sunshine and Public Records laws are a significant part of Florida's longstanding tradition of open government. No other state can match Florida's commitment to it's citizens that their government will be open and accessible to all". It should be noted that the City of Stuart has no written policies about it's public records procedures or access of it's public records and relies on just verbal procedures. The Division of Library and Informational Services Records and Information Management Program, Department of State, by Florida Statute 119.09 provides that they shall give advice and assistance to public officials in the solution of their problems of preserving, creating, filing and making available the public records in their custody.

Prior to this action, Concerned Boaters had made literally hundreds of requests to the city to furnish public records which the city has done but an impasse has developed between the plaintiffs and the City regarding certain requests made by the plaintiff starting with the letter request by the plaintiff to the city on April 8, 1991. That letter from Concerned Boaters to Jack Noble, the City Manager, requested copies of items in eight numbered paragraphs. That request did not give any dates of any of the documents or information requested nor was it sufficiently described or identified to allow the city to copy the records requested. The city clerk testified that she did not know if most of these records existed, but it also appears that she had not made any search for

any of these records. This letter at the bottom of the page shows a notation that the city clerk was to handle this request. The city clerk testified that she thought members of Concerned Boaters would contact her about the request so that they could personally discuss this to ascertain specifically what public records they are requesting so that unnecessary copies would not be made. Neither the plaintiffs nor any members of Concerned Boaters, followed up the request of April 8, until after the filing of this suit. The city should have followed up the plaintiffs request of April 8 to ascertain exactly which public records, with dates, that the plaintiffs wished to have copies. This was an affirmative duty on the city, not the duty of the plaintiff. Included in this request of April 8, were Minutes which clearly should have been available.

RONALD SALVADORE, by letter of April 9, 1991, requested a copy of the tape-recording of the City Commissioner's meeting of April 8, 1991 and followed up by another letter to the City Manager on April 10, 1991. The testimony discloses that the City Clerk's office offered to make available a tape-recording machine to Mr. Salvatore, but Mr. Salvatore did not avail himself of this procedure. The City does not have any high-speed recording equipment to make copies of their city commission meetings and it was a reasonable request to have the person requesting the copy of the tape to operate a tape machine to make copies of the city's tape of the minutes.

VALERIE JONES, by letter of May 8, 1991, to the City Clerk, requested a copy of a memo written by city commissioner, Joan Jefferson, of April 15, 1987 to the city staff. The City Clerk

responded by letter to Valerie Jones on May 9, 1991, stating that there is no memo written by Joan Jefferson on 4-15-87 as requested. Also, Joan Jefferson replied by letter that she had no formal memorandum so the city is not required to produce a memo that does not exist in their files.

VALERIE JONES, by letter of May 10, 1991, to the City Clerk, requested copies of all slip rental agreements between the City and private individuals for city-owned slips in Frazier Creek from January 1975 to the present. The city did not reply to that request and the city clerk stated the reason she did not reply was that their records only went back four to five years and she thought that Valerie Jones or a member of Concerned Boaters would get back with her about this particular request which they never did. Since the records for the boatslip rentals existed for the four to five years, the City should have promptly made copies of those records and furnished them to the plaintiffs upon payment of the statutory fee for copies and promptly informed the plaintiffs that the other records for prior years did not exist for these boat rental slips.

VALERIE JONES, by letter of April 16, 1991, to the City Manager, requested copies of all police reports where two police officers allegedly held a boat off of Shepard Park seawall as reported during the city commission meeting of April 8, 1991. The Minutes of the city commission shows that the Mayor of the City, directed the "staff" to furnish copies of these police reports. From the evidence, it appears this was never followed up by the city and the plaintiffs never received copies of these police reports. These police reports were specifically identifiable and the city

should have promptly furnished these reports if they existed, or if they did not exist, promptly informed the plaintiffs that they did not exist.

VALERIE JONES, by letter of April 16, 1991, to the City Manager, requested copies of a tape made during the city's "retreat" at River Ranch. The City Manager, by letter of 4/22/91 to Valerie Jones stated that she needed to contact the City Clerk to obtain a copy of the tape. In this letter, the City Manager stated that by copy of this letter he was informing the city clerk of Ms. Jones' request. Copies of this tape were not furnished to the plaintiff nor did the city clerk respond that the tape was available for copying. The city clerk stated that she did not have this tape, but the request was forwarded to Anne Craig. Again, the city never informed the plaintiff that the tape was available for copying nor did they offer to furnish a copy of this tape.

CONCLUSIONS OF LAW

There does not appear to be any Florida cases directly on point concerning the question of the defense raised by the city that the plaintiff's requests were not made in good faith or was otherwise unreasonable. ((However, case law does indicate that the city cannot refuse to provide copies of it's public records on the ground that the request is overbroad or not specific.

If any request by the plaintiff was insufficient to identify the records requested to be copied, the city has an affirmative duty to promptly notify the plaintiffs that they needed more information before they could find the records and make copies or that the records did not exist. It is the duty of the city and

not the plaintiffs to follow up on any requests for public records and the city should have made a prompt response if they were unable to furnish copies of any requested records.

The city clerk is the designated custodian of all the public records of the City of Stuart, including the police department and building department unless the city clerk designates specific persons to be custodians of a particular department's records or unless there is a city ordinance designating another records custodian.

The city is required to furnish copies of any taped records they have for the cost of actual duplication and the city should maintain recording equipment to make copies of the tape to the public. A city employee is not required to be present at the recording of the copy, but can require the person requesting a copy of the tape to monitor the recording of the duplicate tape.

The city's refusal to furnish the records that were clearly available for copying as stated in the findings above and the city's unjustifiable delays in responding to the plaintiff's request amounts to an unlawful refusal to permit the public records to be copied. Therefore, the reasonable costs of the enforcement, including reasonable attorneys' fees for the plaintiffs is awarded to the plaintiffs.


Jurisdiction is reserved to determine the amount of reasonable attorney's fees to the plaintiffs and costs.

The defendant, CITY OF STUART, shall (a) furnish copies of the records request in ^{this} suit within seventy-two hours of this order to the plaintiffs upon payment of copying fees by the

plaintiff to the city, and (b) make available the tapes requested by this suit with a tape machine to make the copies.

Within the seventy-two hour period the city shall specify with particularity which records are unavailable or in which they need more specific information to make copies by written letter to the plaintiffs attorney. Upon plaintiffs furnishing specific information of these records, defendant shall promptly comply by furnishing copies of these records within seventy-two hours. Jurisdiction is reserved to enforce this provision and additional attorneys fees will be assessed against the City for non-compliance.

DONE AND ORDERED at Vero Beach, Indian River County, Florida this 17th day of December, 1991. *at 4:00 p.m. CR*


CHARLES E. SMITH, Circuit Judge

Copies to:

Ted Guy, Esq.
Richard Kibbey, Esq.