

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY FLORIDA

CASE NO.: 16-2005-CA-7052-XXXX-MA
DIVISION: CV-A

MORRIS PUBLISHING
GROUP, LLC d/b/a The Florida
Times-Union, a Georgia limited
liability company,

Plaintiff,

vs.

BRUCE A. THOMASON,
Chief of Police, City of Jacksonville Beach,

Defendant.

ORDER ON PLAINTIFF'S PETITION FOR WRIT OF MANDAMUS

This cause, came before the Court on the Plaintiff's Petition for Writ of Mandamus contained in Count I of the Plaintiff's Complaint. The Court having heard argument of counsel, and otherwise being fully advised in the premises, hereby enters this Order.

On October 11, 2005, a police officer employed by the City of Jacksonville Beach Police Department was involved in the shooting of an armed suspect. Thereafter, the Plaintiff newspaper sought disclosure of the incident report and the name of the police officer involved in the shooting. The City of Jacksonville Beach Police Department ("the Police Department") initially refused to disclose either the incident report or the name of the police officer, relying upon Section 112.533, Florida Statutes. Prior to the hearing on the Petition for Writ of Mandamus, the Police Department made available to the Plaintiff newspaper, and all other media, a copy of the incident report with the name of the police officer redacted.

The Police Department contends that the name of the police officer is protected from public disclosure by virtue of Section 112.533(2)(a), which provides:

A complaint filed against a law enforcement officer or correctional officer with a law enforcement agency or correctional agency and all information obtained pursuant to the investigation by the agency of such complaint shall be confidential and exempt from the provisions

Any appeal?
NONE
as of
1-18-06
per 1st
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of s. 119.07(1) until the investigation ceases to be active ...

Underlying its reliance upon this provision, the Police Department indicated that following the shooting of October 11, 2005, it *internally* generated a *written* complaint against the officer involved, *as it does in the case of all shootings*.

The question for this Court's consideration is two fold. First, does the name of the police officer involved in the shooting of an armed suspect which is listed on an incident constitute "information obtained pursuant to the investigation by the agency" such that it is exempt from public records disclosure pursuant to § 112.533(2)(a). Second, does a written complaint internally generated by a law enforcement agency as a matter of procedure in all cases involving the shooting of a criminal suspect, constitute a "complaint" for purposes of § 112.533(2)(a), such that any "information obtained pursuant to the investigation by the agency" is exempt from public records disclosure pursuant to § 112.533(2)(a).

In passing upon these questions, the Court must strictly construe the exemption in § 112.533(2)(a), and should act, within the parameters of the legislative edict, to liberally vindicate the general policy of openness that is extant in § 119.01, Florida Statutes. *City of Delray Beach v. Barfield*, 579 So.2d 315, 318 (Fla. 4th DCA 1991). As also explained in *City of Delray Beach*:

[t]he primary intent voiced by the legislature in section 112.533, as indeed in chapter 119, is openness and the availability of public records. The exemption in subsection (2)(a) is narrowly and quite specifically drawn....

Id. Based upon this backdrop, it would appear that both questions must be answered in the negative.

First, an incident report, together with the name of the police officer involved, cannot be said to be "information obtained pursuant to the investigation by the agency." See 1996 Florida Attorney General Opinion No. 27 ("Such reports relate to a specific crime and are prepared after an alleged crime has been committed..."). The incident report in the instant case, with the name of the police officer involved plainly stated therein would have been generated regardless of whether a "complaint" against that officer was "filed." It cannot logically be said that the inclusion of the officer's name in the incident report was related to or a result of an investigation (i.e., was "information obtained pursuant to the investigation by the agency").

Second, it would seem to defeat the stated intent of the legislature to allow a law enforcement agency to trigger the exemption of otherwise public information by maintenance of a procedure that calls for the "filing" of a "complaint" in every case involving the shooting of a suspect. As explained in *City of Delray Beach*:

[T]he specific text authored by the legislature reflects an intention that, when someone goes to the trouble of filing a formal written complaint against a law enforcement officer employed by the agency, that kind of complaint will be given a slightly different treatment as

to confidentiality than a less formal oral complaint or grievance.

City of Delary Beach, 579 So.2d at 318.

It would appear that the type of "complaint" meant in §112.533(2)(a) is not one that is automatically filed in every case. To accept any other interpretation of the statute, would result in its potential application in every case of an investigation of a law enforcement officer where the agency merely reduces the complaint to a writing. This is clearly not the intent of §112.533(2)(a).

The foregoing having been said, the Plaintiff newspaper is entitled to the name of the police officer involved in the shooting of the armed suspect on October 11, 2005, and mandamus should issue. In providing the extraordinary remedy of mandamus at this juncture, the Court notes that the parties each agreed at the hearing that the underlying issues for the Court's consideration were matters of law and not evidence, and that the case is ripe for judicial determination on an expedited basis as pertaining to protection of a free press.

Accordingly, it is hereby

ORDERED and ADJUDGED that Bruce A. Thomason, Chief of Police for the Jacksonville Beach Police Department, shall immediately provide by facsimile transmission to counsel for the Plaintiff newspaper, at (904) 358-1852, a copy of an unredacted incident report clearly identifying the name of the police officer involved in the shooting of the armed suspect on October 11, 2005.

DONE AND ORDERED at Jacksonville, Duval County, Florida, in Chambers, this 14th day of October, 2005.



DONALD R. MORAN, JR.
CHIEF JUDGE

Copies (by United States Mail and Facsimile Transmission):

George D. Gabel, Jr., Esquire
Lamar Winegart, III, Esquire