

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT OF FLORIDA, IN
AND FOR PALM BEACH COUNTY, FLA.

CASE NO. CL 94-2724 AD

MORTON RECHLER and
BEVERLY RECHLER, his wife,

Petitioners,

vs.

THE TOWN OF MANALAPAN, a
municipality in Palm Beach
County, Florida

Respondent.

affirmed in part

21 FLWD1046

RFA. 1996)

See p. 12

WRIT OF MANDAMUS

THIS CAUSE came before the Court for non-jury trial, on July 13, 1994 and August 12, 1994, upon Petitioner's Amended Petition for writ of Mandamus. The Court, having carefully reviewed the entire file, having heard and carefully considered the testimony of the witnesses, having carefully reviewed and considered the documentary evidence, having carefully considered the legal authorities cited by the parties, having conducted its own legal research, having carefully listened to and having carefully considered the argument of very able counsel, and being otherwise duly advised in the premises, hereby makes the following ruling:

CONCLUSIONS OF LAW

1. FLORIDA'S PUBLIC RECORDS ACT was enacted to promote a state interest of the highest order; namely, to insure free access to

governmental records. In this regard, Florida Statute Section 119.01(1) (1993) provides in its relevant portions as follows:

It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person.

The laws of this State require in no uncertain terms that the people of this State shall have free and immediate access to governmental records. No other conclusion can be drawn from Florida Statute Section 119.11(1) which provides in its relevant portions as follows:

Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing giving the case priority over other pending cases.

The First District Court of Appeal of Florida in Byron, Harless, Schaffer, Reid and Associates, Inc., v. State ex rel. Robert W. Schellenberg, et. al., 360 So.2d 83 (Fla 1st DCA 1978) (quashed and cause remanded by Florida Supreme Court 379 So.2d 623 (Fla. 1980)) described Florida's public records law as follows:

In general application, Florida's public records law and its companion, the open public meetings law, promote a state interest of the highest order. By promoting open government and citizen awareness of its workings, Chapter 119 and Section 286.011 enhance and preserve democratic processes. Florida's interest in opening governmental processes to public inspection has repeatedly been emphasized in decisions of our Supreme Court.

2. IT IS WELL SETTLED that the provisions of the Public Records Act are to be liberally construed in favor of open government to the extent possible, and to preserve certain basic freedoms without undermining significant governmental functions such as crime

etection and prosecution. Tribune Co., v. Public Records,
P.S.C.O. No. 79-35504, Miller-Jent, 493 So.2d 480 (Fla. 2nd DCA
1986). In the case at bar, crime detection and the prosecution of
criminals are not implicated.

3. IT IS EQUALLY WELL SETTLED that disclosure of public records
is not a discretionary act; but rather, it is a mandatory act.
Mills v. Doyle, 407 So.2d 348 (Fla. 4th DCA 1981).

4. IT IS ALSO WELL SETTLED that the legislative scheme of the
Public Records Act preempt any local laws relating to any delay in
producing records for inspection. The only delay permitted by the
Act is the limited reasonable time allowed the custodian to retrieve
the record and delete those portions of the record the custodian
seeks to exempt. Tribune Co. v. Cannella, 458 So.2d 1075 (Fla.
1984), appeal dismissed, 471 U.S. 1096 (1985).

5. IT IS ALSO CLEAR that there are no provisions made in the
Public Records Act for anyone other than the custodian of the
records to withhold a record, and the only justification for
withholding a record is the custodian's assertion of a statutory
exemption. Tribune Co., supra.

6. A CUSTODIAL OF PUBLIC RECORDS HAS A DUTY, when the
appropriate fee has been forwarded, to respond to public records
request by mail and to furnish by mail copies of the requested
records where the requesting citizen has identified the records with
sufficient specificity to permit the custodian to identify the

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requested records. Wootton v. Cook, 590 So.2d 1039 (Fla. 1st DCA 1991).

7. FLORIDA'S PUBLIC RECORDS ACT provides for or addresses the question of costs or charges associated with the production of governmental records. Florida Statute Section 119.07 (1993) provides in its relevant portions as follows:

(1)(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 clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost 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).

See also, Florida Statute 119.07(1)(a) which provides inter alia:

...The custodian shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law or, if a fee is not prescribed by law, ...

Florida Statute Section 119.07(1)(b) was discussed by the First District Court of Appeal in Florida Institutional Legal Services, Inc., v. Florida Department of Corrections, 579 So.2d 267 (Fla. 1st DCA 1991). In short, the First District stated:

The Department of Corrections' rule permitting the assessment of a special service charge for providing information when the nature or volume of the records requested requires extensive clerical supervisory assistance by Department personnel, and defining the word "extensive" as meaning that it will take more than 15 minutes to locate review for confidential information, and copy and refile requested material, comported with the intent and purposes of the statute permitting agency to charge a special service charge if the nature or volume of the public

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records requested to be inspected, examined, or copied requires extensive use of information technology resources or extensive clerical supervisory assistance and thus, rule was not invalid. West's F.S.A. section 119.07(1)(b).

8. MANDAMUS IS AN EXTRAORDINARY WRIT; and, it is a discretionary remedy which should not be granted when it will achieve no beneficial result such as when the act sought to be compelled has been performed. City of Winter Garden v. Norflor Construction Corporation, 396 So.2d 865 (Fla 5th DCA 1981)

9. MANDAMUS IS ALSO DEFINED AS A REMEDY TO COMMAND PERFORMANCE of a ministerial act that the person deprived has a right to demand, or a remedy by which public officials or agencies may be coerced to perform ministerial duties that they have a clear legal duty to perform. In short, it is essentially a coercive writ that commands performance. (35 Fla Jur 2d section 2 page 193) Moreover, mandamus is an appropriate remedy to compel public functionaries such as town clerks to perform the duties imposed upon them by virtue of their office.

10. MANDAMUS IS A REMEDY AT LAW. However, it is equitable in nature and is controlled according to equitable principles. It is a harsh and extraordinary common-law writ. Its nature is such that no restriction can be placed on the right of an aggrieved party to its issuance. (35 Fla Jur 2d section 4 pages 194 and 195)

CONCLUSIONS OF FACT AND LAW

11. THE GREATER WEIGHT OF THE EVIDENCE in this case demonstrates that Respondent, TOWN OF MANALAPAN, has failed to

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comply with the requirements of Chapter 119, Florida Statutes (1993), Florida's "Public Records Act", by not timely providing PETITIONERS with access to, inspection of, and copies of, the public records of the TOWN OF MANALAPAN.

12. THIS COURT FINDS THAT MANDAMUS is an appropriate remedy based upon the greater weight of the evidence presented in this case.

13. THIS COURT FINDS that the delays were unreasonable and constitute an unlawful refusal to permit PETITIONERS to have access to, inspection of, and copies of the public records of the TOWN OF MANALAPAN. In short, the PETITIONERS have by the greater weight of the evidence demonstrated that since August of 1993, the PETITIONERS have been making public records request for specified documents of the TOWN and, with respect to each such request, the TOWN has unreasonably delayed inspection of the requested documents and has thereby demonstrated a pattern or course of conduct violative of the Public Records Act. In essence, the PETITIONERS have established paragraph #7 of their Amended Petition. This finding is based in part upon the following evidence:

a. PETITIONERS' public records request #1 dated August 2, 1993 (PETITIONERS' Exhibit #1) was not fully complied with until approximately November 3, 1993.

b. PETITIONERS' public records request #2 dated August 13, 1993 (PETITIONERS' Exhibit #3) was not fully complied with until approximately November 3, 1993.

c. PETITIONERS on September 7, 1993 sent the following letter to the TOWN: (PETITIONERS' Exhibit #2)

This firm has made two public records requests dated August 2, 1993 and August 13, 1993 respectively,...

...More than 30 days have elapsed since the initial public records request was made and 20 days have elapsed since the second was made.

The failure of The Town of Manalapan to produce the requested documents within a reasonable time constitutes a violation of Chapter 119...

...Please be advised that we intend to file a Writ of Mandamus with the Circuit Court in Palm Beach County to compel production of these records and shall seek attorney's fees and costs as are authorized pursuant to Section 119.12, Florida Statutes, if the aforesaid public records requests are not completed by September 15, 1993...

d. PETITIONERS on October 5, 1993 sent the following letter (PETITIONERS' Exhibit 11) to the TOWN:

My office has been contacting your office on a daily basis since last Wednesday, September 29, 1993, to schedule a time and date on which I can review the litigation files that were requested pursuant to our First Public Records Request

...in light of the unreasonable delay in the production of these public records we have no alternative but to file a Petition for Writ of Mandamus (a copy of which is attached hereto) if these documents are not made available for my inspection by 12:00 noon, Friday, October 8...

e. PETITIONERS on October 6, 1993 sent another letter (PETITIONERS' Exhibit #13) regarding the TOWN'S failure to fully comply with the Act.

f. PETITIONERS' public records request #3 dated October 5, 1993 was not fully complied with until approximately November 12, 1993.

g. PETITIONERS' Exhibit #24) Regarding the third public records

*Judge never met with
the delay due to
non payment of
other charges*

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request the PETITIONERS sent the following letter dated November 11, 1993 to the TOWN: (PETITIONERS' Exhibit #23)

...I resent your characterization of my secretary's inquiries to your office regarding the production of the tapes of the Regular and Special Town Commission meetings as "bothersome".

We served our Third Public Records Request on October 5, 1993, which included, among other things, a request for the aforesaid tape recordings...

...On November 3, 1993, your office provided us with copies of all materials encompassed in these two requests except for the tape recordings...

...Both myself and my secretary repeatedly attempted to contact you to advise that we did not want transcripts at this time but only wanted copies of the actual tape recordings. Each time contact was made with your office, we were advised that you were unavailable. Numerous messages were left expressing our desire to obtain the recordings as opposed to transcripts. Production was demanded by Friday, November 5, because of the unreasonable delay of almost one month in the response to our Third Public Records Request, and your unavailability and non-responsiveness to our calls...

g. PETITIONERS' public records request #4 dated November 15, 1993 was not fully complied with until approximately February 25, 1994. Regarding the fourth request the PETITIONERS sent the following letter dated December 15, 1993 (PETITIONERS' Exhibit #31):

...please advise me when the documents requested pursuant to our Fourth Public Records Request dated November 15, 1993 will be made available for our inspection. Since this request was made one month ago and we have yet to receive a response from you, I would appreciate an answer by the end of the day today.

h. PETITIONERS' public records request #5 dated November 19, 1993 was not fully complied with until sometime after March 31, 1994.

i. PETITIONERS' public records request #7 dated March 1, 1994

was met with the same experience as those which preceded it, including PETITIONERS' public records request #6. PETITIONERS sent a letter dated March 31, 1994 (PETITIONERS' Exhibit #43) the relevant portions of which are as follows:

I have called Mr. Wearn every day this week in a futile attempt to find out when I could obtain the documents requested in my Seventh Public Records Request and the cost of the copies. I have explained in detail the purpose of my calls to Mr. Wearn's staff each time I call. Nevertheless, neither Mr. Wearn or anyone from his office has summoned the courtesy to return my phone calls. Moreover, a review of my file indicates that the Town still has not complied with my Sixth Public Records Request.

PETITIONERS' April 13, 1994 letter to the TOWN reveals the following:

...With respect to our Seventh Public Records Request and the public records request dated March 23, 1994, the failure of the records custodian of the Town of Manalapan (whoever that might be) to permit examination of the records and copies thereof in accordance with the provisions of the Public Records Act, left us no alternative but to file a Petition for Writ of Mandamus.

i. PETITIONERS filed their Petition for Writ of Mandamus on April 5, 1994 at 1:37p.m. Despite the filing of the Petition for Writ of Mandamus the aforementioned pattern of delays did not cease; moreover, they did not cease even after PETITIONERS filed their Amended Petition for Writ of Mandamus.

10. THE GREATER WEIGHT OF THE EVIDENCE clearly establishes a continuing pattern of violations of the Public Records Act by the TOWN OF MANALAPAN in processing the PETITIONERS' public records requests.

11. THIS COURT ALSO FINDS THAT THESE VIOLATIONS ARE CLEARLY

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CAPABLE OF REPETITION AND ARE LIKELY TO BE REPEATED IN THE FUTURE.

The Court makes this finding because it is clear from the evidence that the PETITIONERS' public records requests are being propounded incident to their pending litigation with the TOWN; and, incident to their related administrative matters which are also pending before the TOWN pertaining to the construction of residences on the adjacent properties to the north and south of the PETITIONERS' property. These matters are not concluded, and the evidence shows the PETITIONERS' public records requests are likely to continue until the aforementioned matters are resolved. Accordingly, although the TOWN has now permitted inspection and copying of the requested records, it can not be said that the granting of a writ of mandamus at this juncture would achieve no beneficial result.

12. A WRIT OF MANDAMUS IS APPROPRIATE TO CONTROL the performance of prospective duties when the intricacies of the case demand. For example, where previous failures to provide for the payment of the same or similar obligations made it evident that the respondents would not perform their duty with respect to a debt, the court granted a writ of mandamus compelling fulfillment of that duty even where the respondents were not in default at the time of the issuance of the writ of mandamus. State, ex rel. Gillespie v. Walthall, 124 Fla. 866, 169 So. 552 (1936).

13. In State, ex rel. Harrington v. Daytona Beach, 118 Fla. 773, 160 So. 501 (1935), the city was required to provide in its

annual budget for interest and principal on a municipal obligation, but failed to make those provisions in prior years, and seemingly did not intend to comply with the law in the future. The Court granted the writ before a default occurred in the next fiscal year. The Court found that the past misconduct of the city, in repeatedly failing to provide for the financial needs of the petitioner, gave rise to the issuance of a writ of mandamus to prevent future injury, inspite of the fact that the city was current in its performance for the years in question. The Court stated that it, "...is not obligated to wait until the evil of nonperformance is a reality before issuing its writ of mandamus...". 160 So.2d at 505. See also, State, ex rel. Gillespie v. County of Bay, 112 Fla. 687, 151 So. 10 (1933); State, ex rel. Supreme Forest Woodmen Circle v. Snow, 113 Fla. 241, 151 So. 393 (1933); 35 Fla. Jur.2d Mandamus and Prohibition Section 40 (1993).

15. IN THE CASE AT BAR, THE COURT FINDS that the pattern of violations justifies issuance of a writ of mandamus to the TOWN OF MANALAPAN, directing it to process the PETITIONERS' continuing public records requests according to the legal obligations of the Public Records Act. This mandate shall remain in effect until the matters referenced in Paragraphs 11 above are finally concluded. To do otherwise, under the circumstances of this case, would leave the PETITIONERS without a meaningful remedy. The TOWN could continue to delay processing the PETITIONERS' public records requests, only to

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aim, as it did here, that the relief of mandamus was moot because the records were provided even though provided after the filing of the Petition and the Amended Petition, but before trial.

16. THE COURT FINDS THAT THE GREATER WEIGHT of the evidence does not support the PETITIONERS' claim that the TOWN OF MANALAPAN'S charges were unreasonable and/or excessive. The primary evidence presented on this issue was the testimony of Elizabeth Miller, the TOWN'S Clerk. She testified that the TOWN assessed a special service charge for any public records request taking longer than 15 minutes to address. She testified further that the special service charge was based upon the actual hourly rate of the TOWN'S employee compiling and/or copying the responsive records. (See Florida Statute Section 119.07(1)(a) and particularly (1)(b))

17. THE COURT ALSO FINDS THAT THE GREATER WEIGHT of the evidence does not support the PETITIONERS' claim that the TOWN OF MANALAPAN violated Florida Statute Sections 119.07(1)(a) or (1)(b). (See Florida Institutional Legal Services, Inc., v. Florida Department of Corrections, 579 So.2d 267 (Fla. 1st DCA 1991))

ACCORDINGLY, it is,

ORDERED AND ADJUDGED as follows:

A. Respondent, TOWN OF MANALAPAN, shall process all public records requests submitted by or on behalf of Petitioners, MORTON and BEVERLY RECHLER, strictly in accordance with the requirements of Florida's Public Records Act.

B. The only delay permitted in processing the PETITIONERS' public records requests shall be the limited reasonable time for the custodian to retrieve the records and if necessary, delete those portions that the custodian asserts are exempt from disclosure.

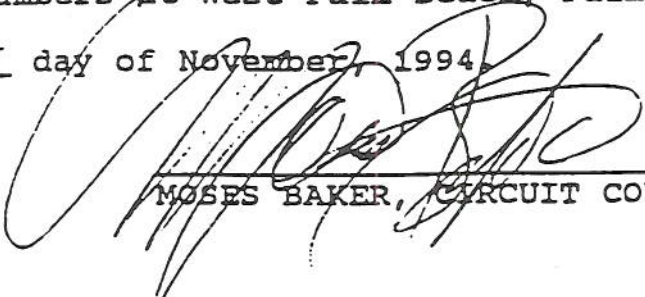
C. The TOWN OF MANALAPAN shall provide copies of public records by mail if the PETITIONERS' public records requests so state. However, the TOWN may condition copies based upon advance payment of charges that are permitted by law.

D. The TOWN OF MANALAPAN shall only charge the PETITIONERS those charges that are permitted by the Public Records Act.

IT IS FURTHER,

ORDERED AND ADJUDGED that the Court retains jurisdiction of this case to enforce this Writ of Mandamus, and to determine all issues relative to attorneys' fees and costs.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 21st day of November, 1994.



MOSES BAKER, CIRCUIT COURT JUDGE

Copies furnished to:

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