

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

CASE NO. CL-91-3954-AF

THE PALM BEACH DAILY NEWS,
THE PALM BEACH POST (PALM
BEACH NEWSPAPERS, INC.) and
WPTV-CHANNEL 5 (THE SCRIPPS
HOWARD BROADCASTING COMPANY),

Plaintiff(s),

vs.

CHIEF JOSEPH L. TERLIZZESE,
in his official capacity as
Chief of Police for the Town
of Palm Beach, Florida

Defendant(s).

ORDER ON PLAINTIFFS' VERIFIED EMERGENCY COMPLAINT
TO ENFORCE THE PUBLIC RECORDS LAW

THIS MATTER came before the Court on Thursday, April 4, 1991, upon the Plaintiffs' Verified Emergency Complaint To Enforce the Public Records Law (the "Complaint") and the Court's Order directing an accelerated evidentiary hearing in accordance with the requirements of Section 119.11(1), Florida Statutes.

The Plaintiffs, various news organizations in South Florida, seek an order of this Court requiring the Defendant, the Town of Palm Beach Police Chief, to disclose the Incident Report relative to a sexual assault alleged to have occurred on March 30, 1991 at 1095 North Ocean Boulevard in Palm Beach on property also referred to as the Kennedy estate. On April 1, 1991, the Palm Beach Police Department issued a press release which made mention only of the time, date, location, and nature of the alleged assault.

Immediately thereafter, the Plaintiff, Palm Beach Daily News, made written demand on the Defendant to inspect the complete and uncensored incident report for the case, including the investigating officer's narrative report of the interview with the victim. By letter dated April 1, 1991, the Police Department, through Captain B.D. Roche, denied the Plaintiff's request, asserting that the information sought was exempt from inspection and examination pursuant to Sections 119.07(3)(d) and (h), Florida Statutes. This Complaint followed.

At the hearing, the Defendant called Captain Roche as his only witness. Roche, who is responsible for overseeing the investigation, testified that no arrest or charges have been made pursuant to the investigation, now only five days old. Although the victim named an alleged assailant, no positive identification has been made as the police have not yet been able to arrange for a photographic lineup. Captain Roche testified without contradiction that release of the incident report at this early date would compromise the investigation and could taint information to be obtained from future witnesses and might also sway the testimony of the suspect himself. Roche stated that the investigation was on-going and active and that further interviews were necessary before the investigation could be completed.

Plaintiffs' contention that the Defendant in this case has deviated from routine procedures regarding the disclosure of incident reports is completely unsupported by the evidence.

Although Plaintiffs' attorney brandished in the courtroom a stack of documents purporting to be incident reports released by the Defendant in other less publicized cases, no attempt was ever made to lay a foundation or predicate for their admission into evidence and they are, therefore, dehors the record.

The Plaintiffs concede that any information or fact which would have the effect of revealing the identity of the victim of the alleged sexual battery is exempt from disclosure by virtue of the provisions of Section 119.07(3)(h). The issues remaining before this Court are whether or not the investigative file falls within the "criminal investigative" exception to Chapter 119 and, if so, whether disclosure should nonetheless be required in accordance with the First Amendment of the United States Constitution and Article I, Section 4, of the Florida Constitution.

Plaintiffs do not seriously contend that the criminal investigation is not "active" as that term is statutorily defined. Indeed, the investigation has been in progress less than a week with no charges filed. As many as four detectives and a sergeant have been assigned to work the case and employee leaves have been cancelled in an effort to bring this investigation to a speedy conclusion. Based on the evidence adduced at the hearing, this Court finds that the criminal investigation to which the incident report in question relates is active and ongoing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future." In making this finding the

Court has carefully considered the three types of information excluded from the definition of "criminal investigative information" and concludes none to be applicable in this instance except for information showing the date, location, and nature of the crime as reported. Florida Freedom Newspapers, Inc. v. Dempsey, 478 So.2d 1128, 1131 (Fla. 1st DCA 1985). As previously noted, such information has already been made available to the Plaintiffs by the Defendant.

Although caselaw suggests that once having reached the conclusion that the records sought are exempt from Chapter 119 the Court's inquiry ends, see Wells v. Sarasota Herald Tribune Co., 546 So.2d 1105 (Fla. 2nd DCA 1989) and Dempsey, supra. at 1131, the Plaintiffs would have the Court inquire further for the purpose of determining whether the Defendant has demonstrated a compelling interest in withholding the requested documents. In any event, the Court is satisfied that the Defendant, at least at this primitive stage of the investigation, has met this additional burden.

In so finding, the Court does not consider itself to be in conflict with the decision of the Fourth District Court of Appeal in Bludworth v. Palm Beach Newspapers, Inc., 476 So.2d 775 (Fla. 4th DCA 1985), rev. den. 488 So.2d 67 (1986). Initially, the Court notes that the issue in Bludworth was whether Section 119.011(3)(c)5, Florida Statutes (1983) should be construed narrowly so as to limit disclosure only to such information as shows the basis for a person's arrest and not to encompass all

information shared by the state with the criminal defendant pursuant to Florida Rule of Criminal Procedure 3.220. Because no arrest has been made or charges filed, this issue is not before the Court.

Contrary to Plaintiffs' assertions, the Court's decision in this case is in all material respects consistent with the trial court's ruling in Bludworth at a similar stage in the proceedings. With no arrests having been made and with the investigation less than three weeks old, the trial judge concluded "that a blanket denial of access to the records requested by the Plaintiffs is the narrowest means of protecting the criminal investigation At such an early stage in this type of an investigation it is clear that a general releases of information would do serious harm to the investigation." Palm Beach Newspapers v. Terlizzese, 10 Med.L.Rptr. 1767, 1769 (Fla.Cir.Ct., May 15, 1984). This Court shares the same concerns as did Judge Rutter to the extent that if witnesses or suspects were to become aware of all information in the possession of the Defendant, the Defendant's attempts to investigate the alleged sexual assault and the circumstances surrounding it would be made more difficult. "As stated, it simply is too early to tell what information could be released without harm and what information must be withheld." Id. at 1769.

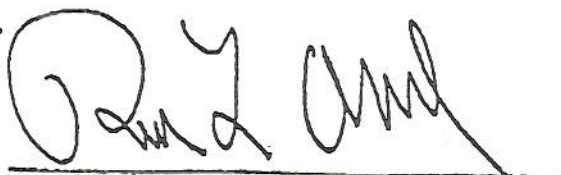
As circumstances change and the investigation progresses, the Defendant's interest in withholding information may be less compelling, requiring that this Order be revisited and reconsidered.

The Palm Beach Daily News, et al.
vs. Chief Joseph Terlizze, et al.,
Case No. CL-91-3954 AF
Page 6

That time has not yet come. Likewise, while the Court considers an in camera inspection of the incident report at this time to be unnecessary, it reserves the right to conduct such an inspection should conditions later warrant it.

Finding no statutory or Constitutional impediment to the Defendant's actions, it is ORDERED AND ADJUDGED that the Plaintiffs' request for issuance of a peremptory writ of mandamus requiring the Defendant and his agents, servants, designees, subordinates, and employees, acting within their course and scope of authority, to permit the Plaintiffs to inspect and examine the record described within the emergency Complaint is DENIED. Said denial is without prejudice to the Plaintiffs' right to reapply for an Order requiring disclosure at any time they in good faith believe the reasons for maintaining the confidentiality of the records are no longer present. Nothing in this Order should be construed to prevent the voluntary release of any of the requested records to the Plaintiffs or any other members of the public at any time without further Court Order, except that any fact or information which reveals the identity of the victim of the alleged sexual battery shall remain exempt from disclosure.

DONE and SIGNED in Chambers at West Palm Beach, Florida,
this 5th day of April, 1991.


Richard L. Oftedal
Circuit Court Judge

The Palm Beach Daily News, et al.
vs. Chief Joseph Terlizzese, et al.,
Case No. CL-91-3954 AF
Page 7

copies furnished:

L. Martin Reeder, Jr., Esq.
Steel Hector & Davis
1900 Phillips Point West
777 South Flagler Drive
West Palm Beach, Florida 33401-6198

John C. Randolph, Esq.
Town Attorney, Town of Palm Beach
c/o Jones, Foster, Johnston & Stubbs
505 South Flagler Drive
West Palm Beach, Florida 33401

Chief Joseph L. Terlizzese
Palm Beach Police Department
345 South County Road
Palm Beach, Florida 33480