

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. _____ DIVISION _____ SECTION _____

MALIKAH ASANTE-CHIOKE
VERSUS
ROBERT P. HODGES

FILED: _____

DEPUTY CLERK

PETITION FOR WRIT OF MANDAMUS
PURSUANT TO THE LOUISIANA PUBLIC RECORDS LAW

Now into Court comes petitioner Malikah Asante-Chioke, who respectfully requests that this Court issue a writ of mandamus pursuant to Article XII, Section 3 of the Louisiana Constitution, the Louisiana Public Records Law, La. R.S. 44:31 *et seq.*, and other applicable law cited herein, directing Louisiana State Police Superintendent Robert P. Hodges, in his official capacity as records custodian for the Louisiana State Police, to produce immediately all documents withheld by them in response to Petitioner's public records request. Petitioner additionally seeks penalties for violation of the Public Records Law as well as attorneys' fees and costs in relation to this writ as provided for in La. R.S. 44:35(D)-(E). Petitioner is entitled to an expedited hearing under La. R.S. 44:35(C) and the Louisiana Code of Civil Procedure art. 2591, 2592 and 2595.

In support of this Petition, Petitioner states the following:

I. PARTIES

1. Petitioner Malikah Asante-Chioke is a natural person of the age of majority and a resident of Louisiana. She sought records from Defendant through a public records request that is the subject of this suit.

2. The Louisiana State Police Department (“LSP”) is a state law enforcement agency with headquarters in Baton Rouge, Louisiana. It is a “public body” as defined by the LPRC. La. R.S. 44:1(A)(1).

3. Defendant Robert P. Hodges (“Defendant Hodges”) is the Superintendent for the LSP and the Deputy Secretary of the Department of Public Safety Services (“DPSS”). Upon information and belief, Defendant Hodges is the official records custodian for the LSP. La. R.S. 44:1(A)(3). Defendant Hodges is sued in his official capacity.

II. JURISDICTION

4. Petitioner brings this suit pursuant to La. R.S. 44:35.

5. “A writ of mandamus may be directed to a public officer to compel the performance of a ministerial duty required by law.” La.C.C.P. art. 3863.

6. In the context of the Public Records Law, mandamus is appropriate when a public agency arbitrarily refuses access to public records based on “a lack of well-reasoned consideration for the relevant law.” *Washington v. Cannizzaro*, 2020-0470, p. 11 (La. App. 4 Cir. 3/17/21); 317 So.3d 826, 835.

7. Suits filed under the Public Records Law “shall be tried by preference and in a summary manner.” La. R.S. 44:35(C).

III. STATEMENT OF FACTS

8. Petitioner Malukah Asante-Chioke seeks public records related to the shooting and killing of her father, Jabari Asante-Chioke, at the hands of Louisiana State Police.

The Shooting

9. On November 21, 2021, LSP Officer Nicholas Dowdle and other Louisiana police officers shot 36 rounds at Petitioner's father, killing him. At the time of the shooting, Colonel Lamar Davis as the then-LSP Superintendent, was responsible for the training and supervision of LSP officers.

10. On November 18, 2022, Petitioner filed suit against the officers who shot her father and their supervisors in the United States District Court for the Eastern District of Louisiana, bringing claims of, *inter alia*, excessive force, unlawful seizure, wrongful death, and negligent training. *See* Complaint, *Asante-Chioke v. Dowdle, et al.*, No. 22-4587, (E.D. La. Nov. 18, 2022), ECF No. 1. Petitioner served a third-party subpoena on the LSP in this federal case, but the LSP refused to produce any responsive documents.

The Public Records Request

11. On May 31, 2024, Petitioner, through her counsel, submitted a request for public records to the LSP related to (i) the shooting of Mr. Asante-Chioke; (ii) the training and supervision of officer Nicholas Dowdle; and (iii) certain records related to Lamar Davis's tenure as Superintendent of the LSP. The requests were as follows:

1. All employment and/or personnel files of LSP officer Nicholas Dowdle. This includes but is not limited to, any resumes, employment applications, letters of reference, training records, letters of reprimand, disciplinary records, performance evaluations, and any performance awards or recognition. For the avoidance of doubt, we do not seek any confidential personal information, including financial or medical information, and request that, if the requested files contain any such materials, that they be produced with appropriate redactions.

2. All documents and communications related to Nicholas Dowdle's disciplinary history during his tenure as an LSP employee, to the extent any such documents or communications are not produced in response to the previous request. This includes but is not limited to all documents and communications related to formal or informal complaints filed against Nicholas Dowdle, any internal investigations involving him, and all disciplinary measures taken against him.
3. All documents and communications related to Nicholas Dowdle's current employment status with the LSP.
4. All training materials received by and all records of trainings administered to Nicholas Dowdle regarding de-escalation tactics or encounters with individuals suffering from mental health issues from the start of his employment with the LSP through November 21, 2021.
5. Former LSP Superintendent Lamar Davis's employment and/or personnel files during his tenure as an LSP employee. This includes but is not limited to, resumes, employment applications, letters of reference, training records, letters of reprimand, disciplinary records, performance evaluations and/or awards, and records related to his retirement from the LSP.
6. All documents and communications related to Lamar Davis's disciplinary history during his tenure as an LSP employee, including but not limited to, all formal or informal complaints filed against him, any internal investigations involving him, and all disciplinary measures taken against him.
7. All documents related to the Officer Involved Shooting of Jabari Asante-Chioke at which Nicholas Dowdle was present on November 21, 2021. This includes but is not limited to official or unofficial reports, interview notes, interview recordings or transcripts, completed standard form documents, written correspondence, transcripts or recordings of all verbal communications, or statements to the public, to East Jefferson Levee District Police Department employees or personnel, or to LSP employees or personnel, including drafts thereof.
8. All video footage relating to the Officer Involved Shooting of Jabari Asante-Chioke at which Nicholas Dowdle was present on November 21, 2021, including, but not limited to, video footage from body-worn cameras, squad car cameras, mobile devices, pole cameras, security cameras, or other surveillance footage.

9. All documents and communications relating to any investigation conducted by the LSP following the Officer Involved Shooting that Nicholas Dowdle was present at on November 21, 2021, including, but not limited to investigative reports, notes, or memoranda regarding interviews with LSP or East Jefferson Levee District police officers, witnesses, evidence collected from the scene, and/or any other internal affairs documentation.

A copy of this request is attached as **Exhibit A**.

12. That same day, Petitioner's counsel received an automated, non-substantive response stating that the DPSS had "received" the request with an assigned reference number of R006622-053124. A copy of the response is attached as **Exhibit B**.

13. On June 4, 2024, the DPSS Records Management Division responded that "the records requested are exempt from disclosure under FOIA," citing Public Records Law section 44:3(A)(1), *i.e.*, the exemption protecting from automatic disclosure "records pertaining to pending criminal litigation or any criminal litigation which can be reasonably anticipated." A copy of the response is attached as **Exhibit C**. The DPSS explained that "LSP has interpreted [Public Records Law section 44:3(A)(1)] to extend to the time while under DA review, even where charges may be unlikely, since DA has final word on prosecution." Ex. C. Despite the shooting occurring nearly three (3) years ago, the DPSS asserted, "Currently this is still pending review at the Jefferson Parish District Attorney's Office." Ex. C. The DPSS also invited Petitioner's counsel to "reply to this email" if she had questions or needed additional information. Ex. C.

14. On July 2, 2024, Petitioner's counsel replied, citing authority establishing that Public Records Law section 44:3(A)(1) "applies only if prosecution is 'reasonably foreseen or contemplated, *i.e.*, if it is reasonably anticipated that criminal litigation will be brought against some potential criminal defendant who was part of the investigation.'" A copy of the response is attached as **Exhibit D** (quoting *In re Matter Under Investigation*, 07-1853 (La. 07/01/09), 15 So.

3d 972, 991). Petitioner’s counsel also sought clarification from the DPSS on the scope of their nondisclosure, requesting that they “please confirm whether the LSP is withholding each and every record responsive to our May 31, 2024 request on the basis [of Public Records Law section 44:3(A)(1)] and not merely because such records relate to a matter that is ‘pending review’ by the Jefferson Parish District Attorney’s Office.” Ex. D.

15. Despite the invitation to “reply to this email” with questions, the DPSS did not respond to Petitioner’s inquiry. On July 9, 2024, Petitioner’s counsel again inquired into the DPSS’s position on disclosure of the requested records and requested their immediate production. A copy of the inquiry is attached as **Exhibit E**. She asked the DPSS to confirm whether they “will continue withholding all responsive records on the basis [of Public Records Law section 44:3(A)(1)] and not merely because such records relate to a matter that is ‘pending review’ by the Jefferson Parish District Attorney’s Office.” Ex. E. To date, the DPSS has not responded to either inquiry.

IV. ARGUMENT

16. The Louisiana Constitution provides that “no persons shall be denied the right to . . . examine public documents except in cases established by law.” La. Const. Art. XII § 3. This constitutional right was codified in the Public Records Law, which “is intended to enforce the public’s fundamental, constitutional right to public records in the most expansive and unrestricted way possible.” *Brown v. Serpas*, 2012-1308, p. 6 (La. App. 4 Cir. 3/20/13), 112 So. 3d 385; La. R.S. 44:1 *et seq.* The Public Records Law must be liberally construed in favor of broad public access. *Id.* Indeed, “whenever there is any doubt as to whether the public has the right to access certain records, the doubt must be resolved in favor of the public’s right to access.” *Does v. Foti*,

11-0014, p. 11 (La. App. 1 Cir. 12/08/11), 81 So. 3d 101, 107, *writ denied*, 2012-0057 (La. 3/2/12), 84 So. 3d 537.

17. “Generally, all records, writings, recordings, tapes, reproductions, and electrical data used, prepared for use, possessed, or retained by any instrumentality of state, parish, or municipal government are ‘public records,’ except as otherwise provided specifically by law.” *Nix v. Daniel*, 95-1393, p. 3 (La. App. 1 Cir. 02/23/96), 669 So. 2d 573, 575, *writ denied*, 96-0878 (La. 10/25/96), 681 So. 2d 360. The burden of proving that a file or document is *not* subject to inspection, copying, or reproduction by a member of the public rests with the custodian. *See id.* “Because the right of access to public records is a fundamental right, guaranteed by the Constitution, access can be denied only when a law specifically and unequivocally provides otherwise.” *Capital City Press, L.L.C. v. Louisiana State Univ. Sys. Bd. of Sup’rs*, 2013-2001, p. 11 (La. App. 1 Cir. 12/30/14); 168 So.3d 727, 736, *writ denied*, 2015-0209 (La. 4/17/15); 168 So.3d 401.

18. Certain limited exceptions apply to the broad disclosure requirement under the Public Records Law, including a specific exemption for records pertaining to “pending criminal litigation or any criminal litigation which can be reasonably anticipated . . .” La. R.S. 44:3(A)(1). The determination of whether Public Records Law section 44:3(A)(1) applies must be made on a case-by-case basis and is subject to judicial review. *See Cormier v. Pub. Records Request of Di Giulio*, 553 So. 2d 806, 807 (La. 1989).

19. In the nearly three (3) years since LSP Officer Nicholas Dowdle, East Jefferson Levee District Officer Jonathan Downing, and East Jefferson Levee District Officer Gerard Duplessis shot and killed Mr. Asante-Chioke, there has never been a “formal accusation instituted either by district attorney or by grand jury” against them or anyone else related to the killing;

therefore, there is no “pending” criminal litigation that would exempt these records from disclosure. *See Nix*, 669 So.2d at 575 (stating that “[c]riminal litigation is “pending” when the formal accusation is instituted either by the district attorney (bill of information) or by the grand jury (indictment)”). So, the sole issue is whether criminal litigation is “reasonably anticipated.”¹

20. For at least two reasons, criminal litigation does not appear to be “reasonably anticipated.” First, following the shooting, the LSP conducted an investigation of the shooting that found (provisionally) that “the force used by Tpr. Dowdle, Ofc. Duplessis, and Ofc. Dowing (sic) against Asante-Chioke was objectively reasonable and within the confines of State law.” A copy of the provisional finding is attached as **Exhibit F**. Second, in their response, the DPSS appears to acknowledge that criminal prosecution of the officers involved in Mr. Asante-Chioke’s killing “may be unlikely”. *See Exhibit C*.

21. Louisiana courts have held a District Attorney’s “policy” that criminal litigation could be anticipated in “any case where the litigation period has not legally prescribed,” without more, cannot shield records from disclosure under Public Records Law section 44:3(A)(1). *Louisiana Capital Assistance Ctr. v. Riley*, 2010-0733, p. 4 (La. App. 4 Cir. 12/15/10); 54 So.3d 177, 180, *writ denied*, 2011-0115 (La. 2/25/11), 58 So.3d 459. Rather, application of Public Records Law section 44:3(A)(1) “must rest on more than an assertion by the prosecutorial authority that criminal litigation is or is not reasonably anticipated.” *In re Matter Under Investigation*, 2007-1853, p. 29 (La. 7/1/09); 15 So.3d 972, 992. In other words, to justify infringing on Petitioner’s constitutional right to inspect, copy, or reproduce public records, the DPSS must provide something more than just their word for it.

¹ Of course, Petitioner’s federal *civil* claims do not implicate the LPR. *See Loewenwarter v. Morris*, 420 So.2d 550, 556 (La. Ct. App.1982), *writ denied*, 421 So.2d 252 (La. 1982).

22. The Louisiana Supreme Court has provided a twelve-factor test to guide a court in determining what is “reasonably anticipated” litigation under Public Records Law section 44:3(A)(1). These factors are: (1) whether criminal litigation may still be initiated given the prescriptive period of the offense to be charged; (2) the temporal and procedural posture of each case; (3) whether criminal litigation has been finally adjudicated or otherwise settled; (4) the assertion of the prosecutorial authority as to its intent or lack thereof to initiate criminal litigation; (5) whether the prosecutorial authority has taken objective, positive and verifiable steps to preserve its ability to initiate criminal litigation, including, but not limited to, preserving evidence, maintaining contact with witnesses, and continuing an investigation; (6) the time it would take to appropriately investigate and try an offense; (7) the prosecutor’s inherent authority to determine whom, when and how he will prosecute; (8) the severity of the crime; (9) the availability of witnesses, victims and defendants; (10) the spoliation of evidence; (11) the reasonable likelihood that a missing witness or an absconded defendant might be found; and (12) the reasonable likelihood that additional witnesses might be willing to come forward with the passage of time. *See In re Matter*, 15 So.3d at 992.

23. The DPSS’s claim that prosecution of the officers involved in the November 2021 killing of Mr. Asante-Chioke is “pending review” by the Jefferson Parish District Attorney’s Office (Ex. C), and that *all records* sought by Petitioner are exempt from automatic disclosure “even where charges may be unlikely” (Ex. C) utterly fails the standard for invoking Public Records Law section 44:3(A)(1). In fact, the LSP’s “interpretation” of Public Records Law section 44:3(A)(1), *i.e.*, that it applies “even where charges may be unlikely,” conflicts with the requirement that criminal litigation be “reasonably foreseen or contemplated.” *Id.* at 991.

24. The LSP's "interpretation" is baseless, and they cite no authority supporting it; instead, they assert only that the "DA has the final word on prosecution." Ex. C. Even this statement is woefully inadequate. Public Records Law section 44:3(A)(1) requires "more than an assertion by the prosecutorial authority that criminal litigation is or is not reasonably anticipated." *Id.* at 29. Where "the only evidence offered . . . is the policy of the [DA] that criminal litigation could be reasonably anticipated in any case where the litigation period is not legally prescribed," courts have found Public Records Law section 44:3(A)(1) inapplicable. *Louisiana Capital Assistance*, 54 So.3d at 180. In short, the DPSS has not satisfied their burden of proving that Public Records Law section 44:3(A)(1) applies.

25. Further, no prosecutorial body has made any indication that there is, in fact, a pending investigation. The shooting of Mr. Asante-Chioke occurred nearly three (3) years ago. No charges have been announced. No statement has been made by the Jefferson Parish District Attorney. The LSP and DPSS cannot indefinitely withhold responsive public records based on their own assurance that such documents are "pending review." Ex. C. As Louisiana courts have repeatedly observed, "were the determination based solely on the testimony of a prosecutor, inconsistencies and caprice could enter the determination of whether the Public Records Act requires disclosure of the records at issue." *Id.*

26. The records Petitioner seeks are a matter of important public interest, and the LSP has offered no basis to invoke any exemption to required disclosure. The Court should mandate disclosure of these records.

27. The Public Records Law provides "[i]f a person seeking the right to inspect, copy, or reproduce a record or to receive or obtain a copy or reproduction of a public record prevails in such suit, he *shall* be awarded reasonable attorney fees and other costs of litigation." La. R.S.

44:35(D)(1) (emphasis added). Further, “[i]f the court finds that the custodian arbitrarily or capriciously withheld the requested record or unreasonably or arbitrarily failed to respond to the request as required by R.S. 44:32, it may award the requestor any actual damages proven by him to have resulted from the actions of the custodian [. . .].” La. R.S. 44:35(E)(1).

28. The LSP has acted in an arbitrary and capricious manner by withholding all the requested records “even where charges may be unlikely.” Ex. C. As explained above, their “interpretation” of Public Records Law section 44:3(A)(1) contradicts Louisiana Supreme Court authority. To date, the LSP has not produced a single record, despite the applicable legal standards providing that there is no basis to withhold such records. In fact, the LSP has not responded to Petitioner’s follow-up emails in over one month. Such conduct merits damages, attorneys’ fees, costs, and any other sanctions allowable by law. Petitioner will submit evidence of her fees incurred in enforcing this public records request at the hearing or otherwise upon the Court’s request.

V. RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests:

- A. That a writ of mandamus be issued directing Defendant to provide the records requested; and
- B. For an award of attorneys’ fees, damages, and costs, and penalties as provided by law, including, specifically, penalties for intentional, unreasonable, and arbitrary denial of a valid public records request in accordance with La. R.S. §44:35.

Respectfully submitted,



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