

IN THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR THE STATE OF FLORIDA  
GENERAL CIVIL DIVISION

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS, LOCAL 754,

Petitioner,  
v.

CASE NO.: 23-CA-13117

DIVISION: J

CITY OF TAMPA and GABRIELLE  
WILLIAMS,

Respondents.  
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ORDER DENYING AMENDED PETITION FOR WRIT OF MANDAMUS

THIS MATTER is before the Court on Petitioner's July 5, 2023, Amended Petition for Writ of Mandamus seeking a writ to compel Respondents, City of Tampa and Gabrielle Williams, to comply with four public records requests made between March and May 2023. The Court, after considering the Amended Petition, court file, record, testimony from the parties, and being otherwise fully informed, finds as follows:

Mandamus is the mechanism by which officials can be compelled to perform lawful, ministerial duties. *See Eichelberger v. Brueckheimer*, 613 So. 2d 1372, 1373 (Fla. 2d DCA 1993). "A party petitioning for a writ of mandamus must establish a clear legal right to performance of the act requested, an indisputable legal duty, and no adequate remedy at law." *Radford v. Brock*, 914 So. 2d 1066, 1067 (Fla. 2d DCA 2005) (internal citations omitted). Mandamus is available only to "enforce an established legal right . . . not to establish that right." *Miami-Dade Cnty. Bd. of Cnty. Comm'rs v. An Accountable Miami-Dade*, 208 So. 3d 724, 731 (Fla. 3d DCA 2016) (internal citations omitted). "A ministerial duty or act is one where there is no room for the exercise of discretion, and the performance being required is directed by law." *Polley v. Gardner*, 98 So. 3d 648, 649 (Fla.1st DCA 2012) (internal citations omitted). It is well established that members of the public have a right to inspect public records and that mandamus is an available remedy when that right is violated. *See, e.g., Michel v. Douglas*, 464 So. 2d 545, 546 (Fla. 1985).

In the present case, Petitioner requested four public records under Florida Statute § 119.07: (1) audio recordings from multiple labor management meetings (“audio recordings”); (2) copies of contracts between the City, Tampa Fire Rescue, and the City’s medical directors (“contracts”); (3) a civil service promotional exam scoring sheet (“score sheet”); and (4) the contents of four personnel files (“personnel files”). Because the Court’s determinations are highly fact-specific, each request will be analyzed individually.

### Audio Recordings

On March 28, 2023, Petitioner requested the audio recordings of the Labor Management meetings held between IAFF and Tampa Fire Rescue during the first three months of 2023. Respondents informed Petitioner that the requested audio recordings were not retained after they were reduced to written meeting minutes. This information was confirmed at the July 10, 2024, hearing. This Court cannot order Respondents to produce records that do not exist. Whether the audio recordings may have been improperly disposed of is not a matter for this Court to determine for mandamus purposes. This court retains jurisdiction to determine whether the award of costs and fees is appropriate. § 119.12, Fla. Stat. (2017); *see Puls v. City of Port St. Lucie*, 678 So. 2d 514, 514 (Fla. 4th DCA 1996).

### Contracts

On May 1, 2023, Petitioner requested copies of the contracts between the City, Tampa Fire Rescue, and the City’s medical director. On May 8, 2023, Petitioner specified that it sought all contracts between 2014 and the date of the request. Respondents acknowledged Petitioner’s request on May 10, 2023. On May 25, 2023, Respondents provided a Request for Proposals (RFP) to Petitioner. Petitioner informed Respondents that the RFP was not the requested record and that the request had been for the completed contract. On August 15, 2023, after the Petition had been filed, Respondents’ counsel sent the requested RFP and associated award letters to Petitioner’s counsel. The Parties agree that this response satisfied Petitioner’s request.

Ms. Williams testified at the hearing that, prior to the award letters being provided, she had inquired of the appropriate individual(s) that would have possession of any responsive documents and believed that the response satisfied Petitioner’s request. Although Petitioner indicated that he had made a substantially similar request years ago that was promptly responded to, there was no testimony that could support a finding that Ms. Williams failed to make a reasonable effort to determine from other officers or employees as to whether the

requested documents existed. To the contrary, the testimony elicited and evidence admitted established that Ms. Williams did, in fact, make a reasonable inquiry. The evidence also reflects that Ms. Williams continued to send additional concerns raised by Petitioner to individual(s) that were knowledgeable as to the information being requested. The information was ultimately provided.

Regardless, the production of the records after a suit has been filed does not automatically cure an error or moot the issue. *Grapski v. City of Alachua*, 31 So. 3d 193, 198 (Fla. 1<sup>st</sup> DCA 2010). However, this Court cannot order Respondents to produce records that Petitioner has already received. The Court reserves jurisdiction to determine the award costs and fees. *See generally* § 119.12, Fla. Stat.; *Puls v. City of Port St. Lucie*, 678 So. 2d at 514. *See also Smith & Williams, P.A. v. W. Coast Reg'l Water Supply Auth.*, 640 So. 2d 216, 218 (Fla. 2d DCA 1994).

#### Score Sheet

On May 4, 2023, Petitioner made a request for:

[T]he completed civil service promotional exam, including question and answer sheets for Tampa Fire Rescue. This will include the 2023 rescue lieutenant exam, 2023 fire captain exam and 2023 district fire chief exam. This would include the scoring/review sheets that show what *each candidates* raw score/education/seniority points were.

(emphasis added).

Ms. Williams responded approximately two weeks later, stating correctly that exam questions and answer sheets are exempt from inspection or copying under the Act, citing Florida Statute § 119.071. Ms. Williams further stated that, pursuant to § 119.071, an exam taker has the right to review his or her own exam. Petitioner does not contest this position.

The back and forth between Petitioner and Respondents was the source of some confusion between the Parties. In response to Respondents' initial position that the request sought exempt information, Petitioner clarified that he was seeking "[t]he Scoring sheet that shows the candidates name – raw score and additional points . . . [t]his sheet is usually one to two pages and includes the above information as available for anyone to see . . .". Based on this communication, it appears that Petitioner was seeking a list that was posted for public review. Mr. Swain, employed by the City, testified that it was his understanding was the

Petitioner was seeking a “master list” of sorts that included all of the candidates’ scores and additional points and that the City does not currently create such a compilation of information.

The communications between Mr. Swain and Mr. Stucco—both before and after Petitioner’s initial request—underscores this understanding. Specifically, Mr. Stucco had inquired of Mr. Swain as to the “list of *all* candidates scores” and how Petitioner could obtain this information. Mr. Swain responded that he believed that the Union received the list that “fire” distributes. Mr. Stucco then clarified that he was looking for “the score sheet with *everyone’s* grades” (emphasis added) and indicated that the document he was referring to was one or two pages and that had seen such a document previously.

Mr. Swain then asked Mr. Stucco to send a copy of the document that he was referencing. Mr. Stucco sent an example and later, on July 10, 2023 (after this action was filed), sent another example of the “type of document that was requested, then requested through public records but was not released.” The exemplar provided was a list of all individuals that had taken the exam for that particular year with their respective scores and additional points. The testimony by all witnesses at the hearing—including that of Mr. Stucco—was clear that Petitioner was seeking a list with a compilation of every candidate’s results and additional points. The testimony was equally as clear at the hearing that Respondent do not create such a document. While Mr. Stucco testified that he “believes” the City creates such a document, there was no indication that he has any personal knowledge of the same.

Petitioner’s closing argument asserts that “Petitioner did not request a ‘master sheet’ containing the information sought . . . . The Respondents were obliged to produce the scoring sheet for the individual test taker revealing raw score and additional points given to each such test taker.” This statement is contrary to this Court’s understanding at the hearing. It was clear from every witnesses’ testimony, the communications between the Parties, and by virtue of the example provided by Mr. Stucco that what was being “requested . . . through public record but that was not released” was a one to two page spreadsheet containing “everyone’s” results that was made available to “anyone” to see - - not each candidate’s individual scoring sheet as provided to them individually. In short, the Petitioner was requesting a master list. The testimony was unequivocal that the Respondents do not create or maintain such a record in the normal course.

Respondents correctly assert that exam answer sheets are exempt from § 119.07. Likewise, public officials are not required to compile records into a specific

format.<sup>1</sup> *Seigle v. Barry*, 422 So. 2d 63, 66 (Fla. 4th DCA 1982). This Court cannot order Respondents to produce information in a specific format. The evidence submitted also establishes that Petitioner was, in fact, requesting information in a specific format that does not exist. Petitioner's request for exam scores, in the form and manner requested, must therefore be denied. To the extent that Petitioner is seeking the information in a different form, such request has not been made, rendering mandamus inappropriate.

### Personnel Files

On May 12, 2023, Petitioner requested the personnel files of four employees. Respondents acknowledged the request and communicated with Petitioner about the request throughout the following week. On May 23, 2023, Respondents sent an invoice with estimates of the costs of reading, redacting, and producing the personnel files. Petitioner contends that the estimates are unreasonable because the estimated cost of producing each file was the same, while the tenure of the four employees ranged from nine months to over two decades. Respondents testified that the estimates provided were itemized appropriately because the only estimated costs were for the labor required to review and redact the files. Ms. Williams testified that they do not charge by page number and they do not know the amount of pages or the amount of time each response will take to prepare and redact until they actually complete the work. Ms. Williams also testified that a reasonable estimate is provided, that time is accounted for, and that refunds would be issued if time was not used.

Respondents correctly assert that they are required to review and redact personnel files before providing them to the public and that they are permitted to require compensation from the requester for the cost of doing so. *Board of County Comm'rs of Highlands County v. Colby*, 976 So. 2d 31, 37 (Fla. 2d DCA 2008). Likewise, Respondents are permitted to provide estimates and require a deposit without first shouldering the cost of reviewing the records. *Id.* This court finds that Respondents provided itemized estimates within a reasonable period of time; Petitioner's request regarding the personnel files is therefore denied.

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<sup>1</sup> *Seigle v. Barry* makes a distinction between a request for records in a specific format and a request for information that is not accessible in *any* format—special requests may be enforced on a case-by-case basis if the requested information is not available “in some meaningful form.” 422 So. 2d at 66.

## Conclusion

Mandamus is an avenue available to members of the public whose public records requests have been unlawfully denied or delayed. However, when considering a petition for writ of mandamus, the Court is limited to granting or denying requests that a government body or agency perform a lawful, ministerial duty—it can neither create a ministerial duty nor prevent a potential future harm. *Daniels v. Bryson*, 548 So. 2d at 680–81. When a petition for writ of mandamus requests that public records be produced, the Court can either grant the request and order that the records be produced, or deny the request. In this case, granting the request is a factual impossibility; all of the requested records have either been produced or do not exist.

ORDERED AND ADJUDGED that Petitioner's Amended Petition for Writ of Mandamus is hereby DENIED IN PART. This court retains jurisdiction to determine the award of costs and fees.

ORDERED in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature.

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ALISSA ELLISON, Circuit Court Judge

Copies to:

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Respondents

Additional copy(ies) provided electronically through JAWS