

**IN THE CIRCUIT COURT OF THE THIRTEENTH
JUDICIAL CIRCUIT IN AND FOR
HILLSBOROUGH COUNTY, FLORIDA**

FEDENA FANORD,
Petitioner,

Case No.: 22-CA-010404
Division: F

v.

UNIVERSITY OF SOUTH FLORIDA
BOARD OF TRUSTEES and
DR. VINAY GUPTA,
Respondents.

**ORDER GRANTING RESPONDENTS' MOTION TO QUASH OR
DISMISS ALTERNATIVE WRIT OF MANDAMUS**

THIS MATTER is before the Court on Respondents' Motion to Quash or Dismiss Alternative Writ of Mandamus filed on March 3, 2023. (Doc. 22). On review of the Petition, the Respondents' Motion, the Petitioner's response, all exhibits and applicable legal authority, the Court finds that the Respondents Motion to Dismiss shall be **GRANTED** and the Alternative Writ **QUASHED** because the Second Amended Petition is facially insufficient.

INTRODUCTION

The Second Amended Petition for Writ of Mandamus arises from multiple public record requests made by Petitioner to the University of South Florida ("the University") and Dr. Vinay Gupta ("Dr. Gupta"). The requests

begin as early as April 8, 2019, and stem from an article that Petitioner Co-Authored with Dr. Gupta, a professor at the University. Petitioner made several vague requests to the University to provide public records related to the article entitled *Bisphosphonate-modified Gold Nanoparticles: A Useful Vehicle to Study the Treatment of Osteonecrosis of the Femoral Head* (“the Article”). After an exchange of several emails seeking to clarify search parameters, the University ultimately ran a search, which yielded 19 results. The University provided an invoice for \$26.50, which was required to be paid prior to release of the records. Petitioner is unsatisfied with the low yielding search results but has not provided any meaningful search parameters. Additionally, Petitioner has not paid the invoice for the costs incurred in redacting confidential information in the 19 records that were found. Petitioner filed a Writ of Mandamus seeking to compel the University to make a proper search for the records before making payment. Subsequently, Petitioner filed an Amended Petition and a Second Amended Petition. The Second Amended Petition (the “Petition”) is the operative petition upon which the Court ordered Respondents to show cause why a writ of mandamus should not be granted. Respondents timely filed the Motion to Quash or Dismiss the Alternative Writ of Mandamus.

FACTUAL BACKGROUND

Petitioner’s first vague and unelaborated request was made on April 8, 2019, via a short email stating “[g]ood afternoon, I

would like to request: Date Range: 11/1/2018 – 12/2/2018 Email vkgupta@usf.edu. Sincerely, Fedena Fanord.” (Pet. Comp. Ex. D, Pg 16). The University’s initial response included an invoice and was sent within seven days.¹ *Id.* Petitioner never arranged for payment for the first records search but on February 5, 2021, almost two years after her first request, sent a second request seeking “all documents submitted to the corresponding author” and attached a link to the article that had 6 co-authors.² On February 9, 2021, the University promptly responded after determining the request was overbroad and asked Petitioner to “clarify and identify with specificity the records you are requesting.” (Pet. Comp. Ex. D. Pg 26). Petitioner’s response lacked search parameters but instead, contended that “any and all specificity lies at the hand of your faculty member.” Petitioner further contended that the University should have a faculty member determine what records Petitioner was requesting and create their own search parameters without providing any other details other than a link to her article. The next day, on February 10, 2021, in response to Petitioner’s email, the University asked Petitioner, to identify which faculty member she was referring to and again requested that Petitioner “please clarify with specificity the records you are requesting to ensure an accurate search.” (Pet. Comp. Ex. D, Page 28).

¹ This invoice was not attached as an Exhibit and there was no mention of how many results this search yielded.

² The article lists Fedena Fanord, Korie Fairbairn, Harry Kim, Amanda Garces, Venkat Bhethanabotla and Vinay Gupta as co-authors.

On February 18, 2021, after several unclarified but contentious responses from Petitioner, which still did not contain additional parameters or different search terms, Petitioner sent another email to a different email address for the Public Records Custodian seeking “[a]ll correspondence pertaining to the article at the following link.”³ Ultimately on March 3, 2021, the University responded via email advising there were 19 results based on Petitioner’s February 18th, 2021 request. In its response, the University acknowledged that it performed “[a] search for all emails with the keyword ‘Bisphosphonate-modified gold nanoparticles: a useful vehicle to study the treatment of osteonecrosis of the femoral head,’” which yielded the 19 results containing confidential student information. The University attached an estimate to the email to cover the cost for review and redaction, estimated to be \$26.50, which was required to be paid prior to inspection or copying of the public records. Petitioner did not respond to the University with any additional parameters, search terms or dates, and did not pay the \$26.50. In May 2022, a letter from Petitioner’s prior counsel to the University, reopened the public records request but did not yield any different results. The letter simply reiterated Petitioner’s demands but did not acknowledge that the University had already found 19 records or that payment had not been made for those records. The University responded with the search parameters that were used

³ The link was a reference to the article “Bisphosphonate-modified gold nanoparticles: a useful vehicle to study the treatment of osteonecrosis of the femoral head.”

in the search and again included the invoice for the 19 records that was sent previously “on March 8, 2021 and March 23, 2021.” Petitioner then filed a Petition for Writ of Mandamus with this Court, which was twice amended.

It is undisputed that the University made at least three attempts to clarify the records requested by Petitioner. Each time, Petitioner responded without providing any clarification. Once the University searched using the best possible terms from the vague request, Petitioner responded that the results were inaccurate and concluded that there must be more records than the 19 emails responsive to the request. However, Petitioner failed to provide additional search parameters, more detailed search parameters, or different search terms. It is also undisputed that Petitioner has not paid the fee invoiced in the amount of \$26.50 for the records responsive to the February 18, 2021, record request.

The Court issued an Alternative Writ on February 13, 2023, to which Respondents responded by filing a Motion to Quash or Dismiss the Alternative Writ. The grounds cited in the response include: a failure of the Petition to contain material facts; failure to state a claim; that Mandamus is not available because of a lack of sufficiency in identifying the records requested, required discretion for redaction, and lack of advanced payment; mootness; lack of service; and controverted facts making mandamus inappropriate.⁴

⁴ Because the Court finds merit in the arguments that the requests were not sufficiently specific and that petitioner has not paid the fees for redaction, the Court need not address Respondents other arguments.

LEGAL STANDARD

A motion to quash or dismiss the alternative writ of mandamus admits as true the facts well pleaded for the purpose of testing its sufficiency. *State ex rel. Harrington v. City of Pompano*, 182 So. 290, 290 (Fla. 1938) citing *State ex rel. Peacock v. Latham*, 125 Fla. 69, 169 So. 597. However, when exhibits are attached, the exhibits become part of the pleading and may be reviewed accordingly. *Ginsberg v. Lennar Fla. Holdings Inc.*, 645 So. 2d 490, 494 (Fla 3d DCA 1994). Bare legal conclusions, as opposed to factual allegations need not be taken as true when deciding a Motion to Dismiss. *Id.* In fact, “where the allegations of the complaint are contradicted by the exhibits, the plain meaning of the exhibits will control.” *Id.* (citing *Affordable Homes v. Devil’s Run*, 408 So. 2d 679, 680 (Fla. 1st DCA 1982)).

If a petition for writ of mandamus is not facially sufficient, a court may dismiss it. *See Radford v. Brock*, 914 So. 2d 1066, 1067 (Fla. 2d 2005). To state a prima facia case for mandamus relief, a petitioner must allege “a clear legal right to performance of the act requested, an indisputable legal duty, and no adequate remedy at law.” *Morse v. State*, 50 So.3d 750, 750 (Fla. 2d DCA 2010) (quoting *Radford v. Brock*, 914 So.2d 1066, 1067 (Fla. 2d DCA 2005)).

Pursuant to section 119.07, Florida Statutes, public records shall be made available to be inspected subject to limited statutory exceptions. Further, section 119.07(1)(c), Florida Statutes (2022),

requires both prompt acknowledgement of a request for public records and a prompt good faith response: “[a] custodian of public records . . . must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith.” *Consumer Rights, LLC v. Bradford Cnty.*, 153 So. 3d 394, 397 (Fla. 1st DCA 2014). The statute further requires that a custodian must furnish a copy of records “upon payment of the fee prescribed by law” or as defined in section 119.07(4)(d), which includes “a special service charge” under certain circumstances. §119.07(4), Fla. Stat. (Emphasis added).

However, to inspect or copy public records, a person must make a request which sufficiently enables the custodian to identify records. *See Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (If a requester identifies a record with sufficient specificity to permit the custodian to locate the record, they must furnish the record); Op. Att’y Gen. Fla. 80-57 (1980) (Custodian must honor a request for copies of records which is sufficient to identify record desired); *see also State ex rel. Cummer v. Pace*, 159 So. 679 (Fla. 1935).

LEGAL ANALYSIS

Petitioner argues that mandamus is appropriate to compel the University to do a proper search for all records related to the article, which was co-authored by Petitioner. It is axiomatic that for an agency to make an adequate search for public records, the person

making a public record request must adequately identify the records sought. *Cook*, 590 So.2d 1039.

The Public Records Act compels an agency to provide access to public records when the records sought are sufficiently identified. *Id.* Here however, Petitioners request was not sufficient to enable a proper search of records. In response to Petitioners multiple requests and Petitioner's dissatisfaction with the yielded results, the University sought to clarify what search terms Petitioner would like to be used in searching for the public records she sought. Although Petitioner was afforded many opportunities, she never articulated what search parameters should be used in searching for the records sought. Moreover, Petitioner did not consistently identify date ranges, types of records sought, or which emails should be searched. As such, Petitioner's responses to requests for clarification have not provided sufficient parameters to yield any different or additional results.

Generally, a court must take uncontradicted factual allegations as true. However, a court need not take as true conclusions or allegations that are contradicted by exhibits attached to the petition. *See Ginsberg v. Lennar Fla Holdings, Inc.*, 645 So. 2d 490 (Fla. 3d DCA 1994). Petitioner alleges that the requests were clear, and that Respondent has not provided the public records as required by section 119. The Court finds that these allegations lack merit.

The Court notes discrepancies within the requests based on the exhibits filed in this action and also in the relief the Petition

itself seeks. One request asked for all *documents*, (Pet. Comp. Ex. C, Pg. 1) then upon a request for clarification the Petitioner asked for all *emails*, (Pet. Comp. Ex. C, Pg. 3) and finally the petition itself asks for records “including but not limited to any document, paper letter, map, book tape, photo, film, sound recording, data processing software or other material, *regardless of physical form*, characteristics, or means of transmission.” (Amended Petition) (Emphasis Added). Some requests ask for emails to “the corresponding author”⁵ (Pet. Ex. C Pg. 1), other requests ask for emails directed to “vkgupta@usf.edu.” (Pet. Comp. Ex. C Pg 9) and some requests ask for all records without clarifying whose email records should be searched (Pet. Comp. Ex. C pg. 8). Based on the undisputed facts as alleged, the Court finds the Petitioners requests were not sufficiently clear to allow a search other than the searches that the University performed.

Petitioner’s public records request contained overly broad parameters that were insufficiently tailored to illicit what Petitioner classifies as a “proper” search for the purported records sought in this case. The University promptly acknowledged each request, responded by asking for more specificity, and ultimately made a good faith effort, which yielded results that Petitioner failed to pay for and failed to correct or add to the search parameters. Without further search parameters, no additional search could be made that would alter the results of the March 3, 2021, search.⁶

⁵ There are a total of 6 co-authors listed.

⁶ USF sought clarification and additional search parameters on Feb 9, 2021, February 10, 2021, February 18, 2021, and March 9, 2021.

As for the 19 records which were ultimately found, Petitioner does not allege, and the Court does not find, that Petitioner is entitled to the 19 records free of charge. A custodian of public records does not have the legal duty to provide copies of records until the person requesting them arranges for payment of the fees prescribed by law. See §119.07(4), Fla. Stat. Thus, there is no clear legal right to inspection to the records where payment is demanded but the requestor does not pay the reasonable charges.

Further, the Petition does not and cannot allege that there is an inadequate remedy at law. Petitioner could have and still can request public records with sufficient specificity to allow the University to use additional parameters, keywords or alternative search terms that may alter the results of the search and provide additional or different results.⁷

CONCLUSION

The University responded without unreasonable delay to multiple requests and sought clarification of the search terms or keywords to be searched. While Petitioner's responses did not sufficiently include any additional parameters or clarification on search terms, the University ultimately construed the request as best as possible and found 19 records that pertain to the request. The University then offered to redact personal confidential

⁷ The Court will not reframe a public record request substituting its own judgment as to proper search terms or to include or exclude certain parameters.

information and produce the records upon payment of \$26.50. Petitioner never attempted to pay this reasonable fee.

As such, Petitioner does not have a clear legal right to the production of the 19 records. The Petition also fails to sufficiently allege that no other adequate remedy at law exists for inspection of additional records. Therefore, the Court finds the Petition is facially insufficient and dismisses it.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that:

1. The Respondents Motion to Quash Alternative Writ of Mandamus is **GRANTED** and the alternative writ is hereby **QUASHED**; and
2. Respondent's Motion to Dismiss Petition for Writ of Mandamus is hereby **GRANTED**; and
3. The Petition for Writ of Mandamus and this cause are hereby **DISMISSED**.

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

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JENNIFER GABBARD
CIRCUIT JUDGE

Copies electronically served via
JAWS on all Attorneys and Parties
registered/associated to this case.