

IN THE THIRTEENTH JUDICIAL CIRCUIT
FOR THE STATE OF FLORIDA
General Civil Division

CASEY PARENTE,
Petitioner,

Circuit Civil Case No.: 21-CA-7810
Division: E

vs.

CITY OF TAMPA,
Respondent.

ORDER DENYING PETITION FOR WRIT OF MANDAMUS
AND DISCHARGING ALTERNATIVE WRIT

This cause is before the court on Petitioner Casey Parente's September 28, 2021 Petition for Writ of Mandamus. The petition seeks to compel Respondent City of Tampa, through its police department, to provide certain public records without assessing a clerical charge for examining the records for confidential or exempt information. After finding that Petitioner had set forth a preliminary basis for relief and stated good cause for review, the Court issued an alternative writ of mandamus on September 29, 2021.

On review of the petition, the City's response, and Petitioner's reply, all exhibits, and applicable legal authority, the Court determines that the petition should be denied and the alternative writ discharged because Petitioner has not demonstrated a clear legal right to the requested relief.

I. JURISDICTION

This Court has jurisdiction to issue writs of mandamus. Art. V, § 5(b), Fla. Const.

II. LEGAL STANDARD

While a writ of mandamus is an extraordinary remedy, its issuance is appropriate when necessary to vindicate the rights of citizens when a governmental agency or official has refused to perform a ministerial duty that the petitioner has established a clear legal right to see performed.

Dante v. Ryan, 979 So. 2d 1122, 1123 (Fla. 3d DCA 2008); *Fla. League of Cities v. Smith*, 607 So. 2d 397, 400-401 (Fla. 1992); *State, ex. Rel. Cortez v. Bentley*, 457 So. 2d 1072 (Fla. 2d DCA 1984). A duty or act is “ministerial,” for purposes of mandamus relief, when there is no room for exercise of discretion and performance being required is directed by law. *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996).

The procedure for consideration of a writ of mandamus in the trial court is as outlined by the Second District Court of Appeal:

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. When a trial court receives a petition for a writ of mandamus, its initial task is assessing the petition to determine whether it is facially sufficient. If it is not facially sufficient, the court may dismiss the petition. If the petition is facially sufficient, the court must issue an alternative writ of mandamus requiring the respondent to show cause why the writ should not be issued. If the petition and answer to the alternative writ raise disputed factual issues, the trial court must resolve these issues upon evidence submitted by the parties. If undisputed affidavits are submitted to the trial court, the court may be able to resolve the issues based on those affidavits.

Radford v. Brock, 914 So. 2d 1066, 1067–68 (Fla. 2d DCA 2005) (internal quotations and citations omitted). Here, it is the application of the law, not factual issues, which is disputed.

III. FACTUAL BACKGROUND

On August 23, 2021, a public records request was made on behalf of Petitioner seeking “all information pertaining to the investigation, including, but not limited to, any and all narrative reports, subpoenas, social media data, and screenshots of messages” related to Tampa Police Department Case No. 18-900871. The City responded the same day, indicating that it had received the request and forwarded it to the appropriate department for a response. The response provided general information about the handling of requests, including that records are reviewed for confidential or exempt information. It added that “should the records contain exempt or

confidential information that is required to be redacted, the City will need to bill for the time expended on making any necessary redactions. Should any extraordinary time be required, the City charges administrative fees as authorized by Florida Statutes.” It advised the person requesting the records that the City would provide an estimate of charges for prepayment prior to work being undertaken.

It was later determined that there was a discrepancy between the date provided by the person requesting the records and the actual date of the investigation involving Petitioner, but the documents were located. The City advised the person requesting the record that the file was “very large” with “many photographs,” that victim information would have to be redacted in accordance with Marsy’s Law, and that a fee would be assessed for the review of the records. The investigation involved Petitioner’s alleged sexual misconduct with minors in violation of Chapter 847, Florida Statutes. Such an investigation would involve protected information. See §119.071(2)(h)(1)(b-c), Fla. Stat.

On September 16, 2021, the City provided Petitioner with an invoice estimating costs in the amount of \$126.10 for reviewing the record, citing section 119.07(4)(d), Florida Statutes, as authority to assess the charge. It also promised a refund if the actual cost turned out to be less than the amount assessed. Petitioner argued that the City lacked authority to assess the fee, and, when the City did not produce the records in the absence of payment, filed the petition.

IV. ANALYSIS

Chapter 119, Florida Statutes, permits a custodian of public records to charge fees under circumstances, including for remote access to public records (section 119.07(2)(c)) and records’ duplication or certification (section 119.07(4)). In addition, section 119.07(4)(d) provides:

(d) If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or 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.

(Emphasis added.)

Petitioner does not challenge the reasonableness of the \$126 charge. Rather, he challenges the City's authority to assess it at all. The law clearly gives the City the authority to do so, and for that reason the petition fails. The court notes, however, that the City's initial response to the person requesting the record was potentially confusing in that it appears to suggest, at least initially, that the requester would be billed only *if* the record contained exempt or confidential information, rather than for the process of making that determination. This does not change the fact that the fee is authorized by law, and Petitioner does not have a clear legal right to the requested relief.

Accordingly, it is now

ORDERED and ADJUDGED that the petition for writ of mandamus is DENIED. It is FURTHER ORDERED that the alternative writ of mandamus is DISCHARGED.

ORDERED in Tampa, Hillsborough County, Florida, on this 30th day of November, 2021.

21-CA-007810 11/30/2021 9:47:04 AM
21-CA-007810 11/30/2021 9:47:04 AM

Anne-Leigh Gaylord Moe, CIRCUIT JUDGE

Copy to:

Casey James Parente, 908 W. Lake Holden Pt., Orlando, FL 32805

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