

#475

JACK ZEWE

24TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF JEFFERSON

LOUIS G. GRUNTZ, JR
INTERIM CITY ATTORNEY
CITY OF KENNER, LOUISIANA

E

STATE OF LOUISIANA
NO. 138-138, SEC

FILE FOR RECORD
2014 MAY 5 PM 2:57
PARISH OF JEFFERSON
CLERK
MOBILE, LA

PETITION FOR A WRIT OF MANDAMUS

NOW INTO COURT comes Petitioner, JACK ZEWE, who respectfully represents

I.

Petitioner, JACK ZEWE, is a person of full age of majority and domiciled in the parish of Jefferson, state of Louisiana.

II.

Defendant herein is LOUIS G. GRUNTZ, JR., city attorney, city of Kenner, Louisiana. He is the custodian of records for the city of city of Kenner.

III.

On May 3, 2013, Tanya Virgadamo filed suit in the United States District Court for the Eastern District of Louisiana against the city of Kenner and John Hellmers, in both his official capacity as fire chief for the city of Kenner, and in his individual capacity, alleging, *inter alia*, that defendants discriminated against her on the basis of sex, female. Exhibit P-1. The parties entered into a settlement agreement which was approved by the court on September 27, 2013. Exhibit P-2.

IV.

By letter dated April 21, 2014, and addressed to the "Office of City Attorney, City of Kenner," Exhibit P-3, Plaintiff requested the following information pursuant to the Public Records Act, LSA-R.S. 44:1, *et seq.*, regarding the Virgadamo complaint::

1. All invoices submitted for payment for the above captioned legal matter.
2. Documents related to any settlement agreement between plaintiff Tanya Virgadamo and the City of Kenner
3. Documents related to any settlement agreement between plaintiff Tanya Virgadamo and Mr. John Hellmers
4. Attorney fees paid by the City of Kenner for the plaintiff in this matter, Tanya Virgadamo as the City of Kenner was the losing (sic) party.

IMAGED MAY 06 2014

V.

By letter dated April 30, 2014, Exhibit P-4, Defendant objected to producing the requested documents, stating:

Please be advised that the "Confidential Settlement and Release Agreement" executed by the parties as part of the dismissal proceedings in the Court contains a confidentiality clause which prohibits the release of, among other things: the terms and conditions of the Agreement, the settlement proceeds, any negotiations related to settlement, and all matters relating to the litigation.

Accordingly, the City of Kenner is not at liberty to divulge any of the information that Mr. Zewe requested. The only comments that the City can make regarding this litigation is that it has been amicably resolved and settled by mutual consent.

VI.

The information requested is subject to the Public Records Act, and Defendant's refusal to provide Plaintiff access to said documents is in violation of the Act. Defendant has refused and will continue to refuse to provide petitioner with the requested public records unless and until ordered by this Honorable Court to do so.

WHEREFORE, petitioner prays:

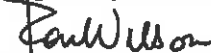
(1) An alternative Writ of Mandamus issue, directing defendant, LOUIS G. GRUNTZ, JR., interim city attorney, city of Kenner, Louisiana, to provide petitioner with a copy of the following public records:

- a. All Invoices submitted for payment for the above captioned legal matter.
- b. Documents related to any settlement agreement between plaintiff Tanya Virgadamo and the City of Kenner
- c. Documents related to any settlement agreement between plaintiff Tanya Virgadamo and Mr. John Hellmers
- d. Attorney fees paid by the City of Kenner for the plaintiff in this matter, Tanya Virgadamo as the City of Kenner was the losing party.

(2) That LOUIS G. GRUNTZ, JR., interim city attorney, city of Kenner, Louisiana, be served with a certified copy of this Petition, and ordered to show cause on the date and hour assigned by this court why the alternative Writ of Mandamus issued herein should not be made peremptory at defendant's costs; and

(3) After the hearing on this application, the Alternative Writ of Mandamus directed to LOUIS G. GRUNTZ, JR., interim city attorney, city of Kenner, Louisiana, and that defendant be cast statutory penalties, and for all of the costs of these proceedings, including attorney's fees.

Respectfully submitted:



RONALD L. WILSON (#13575)
701 Poydras Street, Suite 4100
New Orleans, Louisiana 70139
PH: (504) 525-4361
FAX: (504) 525-4380
Email: cabral2@aol.com

COUNSEL FOR PLAINTIFF

PLEASE SERVE:

LOUIS G. GRUNTZ, JR
Interim City Attorney
City of Kenner
1801 Williams Boulevard
Building C
Suite 100.
Kenner, Louisiana 70062

IMAGED
MAY 08 2014

JACK ZEWE

24TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF JEFFERSON

LOUIS G. GRUNTZ, JR
INTERIM CITY ATTORNEY
CITY OF KENNER, LOUISIANA

STATE OF LOUISIANA
NO. 138138, SEC. _____

FILED: _____

DEPUTY CLERK

ORDER

The foregoing Petition Considered, IT IS ORDERED that:

1. Certified copies of the foregoing petition and this order be served on Defendant, Louis G. Muntz, interim city attorney, city of Kenner, Louisiana.
2. An alternative Writ of Mandamus directing LOUIS G. GRUNTZ, interim city attorney, city of Kenner, Louisiana, either to provide a copy of the following public records or to show cause to the contrary on the 30th day of May, 2014, at 9:30 A.M.:
 - a. All Invoices submitted for payment for the above captioned legal matter.
 - b. Documents related to any settlement agreement between plaintiff Tanya Virgadamo and the City of Kenner
 - c. Documents related to any settlement agreement between plaintiff Tanya Virgadamo and Mr. John Hellmers
 - d. Attorney fees paid by the City of kenner for the plaintiff in this matter, Tanya Virgadamo as the City of Kenner was the losing party.
3. The defendant, LOUIS G. GRUNTZ, JR., interim city attorney, city of Kenner, Louisiana, be served with a certified copy of this Petition, and ordered to show cause on the date and hour assigned by this court why the alternative Writ of Mandamus issued herein should not be made peremptory at defendant's costs.

Gretna, Louisiana, this 6th day of May, 2014.

John J. Molaison
DISTRICT COURT JUDGE

IMAGED
MAY 06 2014

798138

PLEASE SERVE:

LOUIS G. GRUNTZ, JR
Interim City Attorney
City of Kenner
1801 Williams Boulevard
Building C
Suite 100.
Kenner, Louisiana 70062

IMAGED MAY 08 2014

JACK ZEWE

24TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF JEFFERSON

LOUIS G. GRUNTZ, JR
INTERIM CITY ATTORNEY
CITY OF KENNER, LOUISIANA

STATE OF LOUISIANA
NO. 738138, SEC. _____

FILED: _____

DEPUTY CLERK

FILE FOR RECORD
24 MAY -5 PM 2:57
DEPUTY CLERK
PARISH OF JEFFERSON, LA
CODED

MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

MAY IT PLEASE THE COURT:

A. BRIEF STATEMENT OF FACTS

IMAGED MAY 06 2014

Tanya Virgadamo filed suit against the city of Kenner and John Hellmers, suing him in both his individual and official capacity, contending, *inter alia*, that when she was rejected for a position with the Kenner Fire Department, she was discriminated against on the basis of sex. The case was eventually settled, and the parties entered into a "Confidential Settlement and Release Agreement," prohibiting the parties from disclosing the particulars of the Agreement.

Plaintiff submitted a request pursuant to the Public Records Act, requesting the following information:

- a. All Invoices submitted for payment for the above captioned legal matter.
- b. Documents related to any settlement agreement between plaintiff Tanya Virgadamo and the City of Kenner
- c. Documents related to any settlement agreement between plaintiff Tanya Virgadamo and Mr. John Hellmers
- d. Attorney fees paid by the City of Kenner for the plaintiff in this matter, Tanya Virgadamo as the City of Kenner was the losing party.

Defendant, Louis G. Gruntz, Jr., denied Plaintiff's request, contending that, due to the "Confidential Settlement and Release Agreement," the City was prohibited from divulging that information. Contrary to Defendant's contention, the documents are public records and are not specifically and unequivocally exempt by law from disclosure. Therefore, they must be produced.

B. LEGAL ARGUMENT

1. The Records Requested By Plaintiff Are Subject to the Public Records Act and Not Exempt From Disclosure

Pursuant to Article 12, § 3 of the Louisiana Constitution, “[n]o person shall be denied the right to . . . examine public documents, except in cases established by law.” Construing this constitutional provision, the Supreme Court has held that:

The right of the public to have access to public records is a fundamental right, and is guaranteed by the constitution. La. Const. art. 12, §3. The provision of the constitution must be construed liberally in favor of free and unrestricted access to the records, and that access can be denied only where a law, specifically and unequivocally, provides otherwise. Whenever there is doubt as to whether the public has the right of access to certain records, the doubt must be resolved in favor of the public’s right to see. To allow otherwise would be an improper and arbitrary restriction on the public’s constitutional right.

Title Research Corp. v. Rausch, 450 So.2d 933, 936 (La.1984). Accord: *Capital City Press v. Metro Council*, 696 So.2d 562, 564; *Alliance for Affordable Energy v. Frick*, 695 So.2d 1126, 1134 (La.App. 4 Cir. 1997); *Times Picayune v. New Orleans Aviation*, 742 So.2d 979, 985 (La.App. 5 Cir. 1999).

The right of the public to inspect public records is also statutorily protected:

Except as otherwise provided in this Chapter or as otherwise specifically provided by law . . . any person of the age of majority may inspect, copy or reproduce or obtain a reproduction of any public record.

LSA-R.S. 44:31.

The Supreme Court discussed extensively this statutory provision in *Rausch*, holding that

The legislature by the public records statute sought to guarantee, in the most expansive and restricted way possible, the right of the public to inspect and reproduce those records which the law deems to be public. There was no intent on the part of the legislature to qualify, in any way, the right of access. As with the constitutional provision, the statute should be construed liberally, and any doubt must be resolved in favor of access.

450 So.2d at 936-937 (citations omitted).

IMAGED MAY 06 2014

respond to plaintiff's request, the court is empowered to award actual damages to plaintiff. *See* 44:35 (E).

Defendant failed to comply with the Act notwithstanding the fact that he could not point to any provision under the Act making the requested documents specifically and unequivocally exempt. Further, he position has been repeatedly rejected by the prevailing caselaw. In refusing to produce the requested documents, even though a reading of the Act and case law made it obvious that production was mandated, he acted arbitrarily, wrongfully, and capriciously. Plaintiff is entitled to an award of attorney's fees, damages and costs.

Respectfully submitted:



RONALD L. WILSON (#13575)
701 Poydras Street, Suite 4100
New Orleans, Louisiana 70139
PH: (504) 525-4361
FAX: (504) 525-4380
COUNSEL FOR PLAINTIFF

IMAGED
MAY 06 2014