

**IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL
CIRCUIT IN AND FOR VOLUSIA COUNTY, FLORIDA**

ROBERTO MELENDEZ

Petitioner

Case no:

v.

VOLUSIA COUNTY SHERIFF'S OFFICE

Respondent

_____ /

**PETITION FOR WRIT OF MANDAMUS
AND COMPLAINT TO ENFORCE PUBLIC RECORDS ACT**

Petitioner, Roberto Melendez, by and through the undersigned attorneys, comes now and hereby sues Respondent, Volusia County Sheriff's Office and alleges as follows:

1. This is an action requesting a writ of mandamus and demanding a declaratory judgement against Defendant.
2. This Court has jurisdiction over this matter pursuant to Article V, Section 5, of the Florida Constitution, Sections 6.011 and 119.11, Florida Statutes, and Rule 1.630, Florida Rules of Civil Procedure.
3. Venue in this Court is proper as the causes of action alleged herein accrued in Volusia County.
4. Petitioner Roberto Melendez is an individual residing in Volusia County, Florida. Petitioner is a journalist and internationally published photojournalist for VIP Photo News Service and a member of the Society of Professional Journalists and the Native Americans Journalist Association.
5. Respondent Volusia County Sheriff's Office is an "agency" as defined by the Public Records Act and has responsibility for ensuring access to certain public records as required by state law.
6. Petitioner on May 31, 2018 submitted a public records

request to Respondent seeking disclosure of body camera video from deputies on the scene investigating Case No.: 18-6329.

7. Petitioner on December 15, 2018 sent a second public records request for, in pertinent part, the aforementioned body camera video as well as any related 911 audio recordings, to wit: "Video from officers at scene and patrol car of the case 18-6329 and 911 call."
8. Respondent on January 11, 2019, almost a month later, responded to Petitioner's public records request stating essentially that the request was "still pending".
9. Respondent on January 14, 2019 sent Petitioner confirmation that it was in possession of the requested body camera video along with an estimate for the cost of producing to Petitioner the requested public records, to wit:

"I have heard back from the DRU regarding the video for 18-6329. There are approximately 7 hours of video, which will need to be viewed to determine if there is any exempt information. The cost before redactions is \$105 (\$15/hour x 7 hours). Please let me know if you are still interested in obtaining the video for this call number."
10. Petitioner on February 18, 2019 confirmed with VCSO in writing to proceed with review and disclosure of the requested body camera video.
11. Petitioner on March 20, 2019 reminded VCSO in writing that it had yet to disclose the Requested Records.
12. Petitioner on April 5, 2019 again reminded VCSO in writing that it had yet to disclose the Requested Records or provide an update.
13. Petitioner again reminded VCSO in writing about the outstanding Requested Records on May 17, 2019.
14. Again on June 24, 2019, Petitioner requested another update from VCSO in writing.
15. On the same day, June 24, 2019, a VSCO agent replied to Petitioner's request as follows: "I will follow up (again) with the 911 people. I'm surprised they haven't

gotten back to you -- they are very responsive to records requests. It's possible that 911 wasn't called, but they still would have let you know. :- ("

16. About a year later, on July 7, 2020, Plaintiff again followed up with VCSO about the outstanding Requested Records. Petitioner complained to VCSO that it's failure to disclose the Requested Records violated the Public Records Act and demanded disclosure within five days pursuant to Section 119.12, Florida Statutes.
17. VCSO replied the same day, July 7, 2020, that Petitioner's request would be "forwarded to the relevant department(s) . . ."
18. VCSO then twice contacted Respondent responded on July 9, 2020 via email. Both responses were time stamped within one second of each other. The first response stated, "On January 14, 2019 correspondence was sent to the requester pertaining to action needed in order to complete the request. No response was received and the request was closed out. At this time the information requested is no longer available." VCSO's second response simply stated that "no records exist" and that Petitioner's "request has been closed."
19. Upon information and belief VCSO simply refuses to provide the Requested Records.
20. VCSO never disclosed the Requested Records to Petitioner.
21. VCSO acted in bad faith by ignoring Petitioner's repeated inquiries, failing to disclose the Requested Records and, upon information and belief, simply refusing to provide the Requested Records. VCSO's actions failure deprived the Petitioner of an opportunity to timely evaluate VCSO's actions on his own.
22. The Florida Constitution guarantees "every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf" unless those records are confidential or exempt from disclosure. Art. I, s.24(a), FLA. CONST.
23. Section 119.011, Florida Statutes, defines "public

records" which are open to inspection as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business of any agency."

24. The Requested Records were made or received by VCSO in connection with the transaction of official business and were prepared with the intent to communicate, perpetuate or formalize knowledge. Therefore, the Requested Records constitute public records within the meaning of Section 119.011, Florida Statutes.
25. Petitioner has a clear legal and constitutional right to inspect all portions of public records to which no statutory exemption or confidentiality applies. Art. I, § 24(a), Fla. Const.; Fla. Stat. § 119.07(1)(a).
26. VCSO has not asserted that any exemption or confidentiality applies to the Requested Records.
27. As a custodian of public records, VCSO has a mandatory and non-discretionary duty to permit the timely inspection of all non-exempt, non-confidential public records and bears the burden of proving an exemption or confidentiality. Fla. Stat. § 119.07(1).
28. VCSO breached this duty by failing to provide the requested records.
29. VCSO's breaches were intentionally done.
30. Petitioner has no other adequate remedy at law.
31. All conditions precedent to this action have been met, sustained, or waived by VCSO's actions as alleged herein.
32. Petitioner has incurred costs in pursuing this action, retained the undersigned counsel to represent his interests, and is obligated to pay a reasonable fee for the undersigned's legal services. Accordingly, should Petitioner prevail in this action, he is entitled to costs and attorneys' fees pursuant to Section 119.12, Florida Statutes.

COUNT I - PETITION FOR WRIT OF MANDAMUS

33. Plaintiff realleges paragraphs 1 through 28, *supra*.
34. Section 119.07(1)(a), Florida Statutes, provides:
Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.
35. VCSO has a ministerial, non-discretionary duty to disclose public records upon request.
36. VCSO failed, despite multiple written requests, to produce the Requested Records.
37. VCSO has not asserted that any exemptions to the Public Records Act apply to Petitioner's request.
38. VCSO violated the Public Records Act by delaying the disclosure of the Requested Records, failing to produce the Requested Records and, upon information and belief, destroying the Requested Records.
39. Mandamus is an appropriate remedy to enforce violations of the public records law.
40. Petitioner is entitled to and seeks the issuance of a writ of mandamus ordering VCSO to produce the Requested Records.

Wherefore, Petitioner requests that this Court issue a writ of mandamus ordering VCSO to produce the requested records, and an order granting Petitioner his reasonable attorneys fees.

COUNT II - DECLARATORY RELIEF

41. Plaintiff realleges paragraphs 1 through 28, *supra*.
42. VCSO violated the Public Records Act by delaying the disclosure of the Requested Records, failing to produce the Requested Records and, purposely and intentionally refusing to produce them.

43. There is a bona fide, actual and present need for a judicial declaration of Petitioner's right to inspect the Requested Records.
44. The declaration sought deals with a present, ascertained set of facts and a present controversy concerning that set of facts.
45. The rights of Petitioner are dependent upon the aforementioned set of facts and the law applicable to those facts.
46. Petitioner and VCSO have an actual, present, adverse and antagonistic interest in the subject matter of this action.

Wherefore, Petitioner demands a declaratory judgment be entered by this court declaring that VCSO has violated the Public Records Act, award to Petitioner his costs and attorneys fees and any other relief deemed just and proper by the Court.

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