

Kathryn Casteel,
Petitioner,

24th Judicial District Court
Jefferson Parish
State of Louisiana

vs.

Joseph P. Lopinto III,
Defendant.

Docket No. 816-723
Division _____

L

FILED: _____

DEPUTY CLERK

**PETITION FOR WRIT OF MANDAMUS PURSUANT TO LOUISIANA PUBLIC
RECORDS LAW**

NOW INTO COURT, through undersigned counsel, comes petitioner Kathryn Casteel, who requests, pursuant to Article XII, Section 3 of the Louisiana Constitution of 1974, La. R.S. 44:31 *et seq.*, and other law cited herein, that this Court issue a Writ of Mandamus directing defendant Joseph P. Lopinto III, in his official capacity as records custodian for the Jefferson Parish Sheriff's Office ("JPSO"), to provide Ms. Casteel with public records in JPSO's possession and allow Ms. Casteel to reproduce those records. Ms. Casteel also requests that the Court award Ms. Casteel reasonable attorney fees for the enforcement of her rights as authorized by La. R.S. 44:35(D). Ms. Casteel asks that this Court set an expedited hearing within ten days of service of this petition, as required by La. C. C. P. art. 3782.

In support of this petition, Ms. Casteel states the following:

I. INTRODUCTION

1. This case arises from two violations of the Louisiana Public Records Law ("PRL") by Jefferson Parish Sheriff, Joseph P. Lopinto III.
2. Following the killing of Modesto Reyes by JPSO deputies in May 2020, petitioner Kathryn Casteel, an investigative reporter with the Southern Poverty Law Center, submitted a public records request to JPSO seeking various public records related to excessive use of force, including certain Internal Management Division, or "Internal Affairs," records.
3. JPSO initially refused Ms. Casteel's request in its entirety, but after a series of meetings between Ms. Casteel, undersigned counsel, and JPSO's legal advisor, JPSO changed its position and agreed to disclose roughly 65 responsive records from JPSO's Criminal Investigation Bureau

(“CIB”) and one Internal Affairs record. JPSO refused to disclose the remainder of the responsive Internal Affairs records.

4. JPSO only permitted Ms. Casteel to inspect the disclosed records in person or obtain copies of them from JPSO at a cost of \$2,305. JPSO denied undersigned counsel’s request to reproduce the records on Ms. Casteel’s behalf using his own equipment and at his own expense, as permitted by the PRL.

5. Ms. Casteel now seeks the enforcement of two of her rights under the PRL: Her right to “copy or reproduce any public record,” La. R.S. 44:31(B)(1), using her own equipment and at her own expense, and her right to access the withheld Internal Affairs records responsive to her request.

II. PARTIES

6. Petitioner Kathryn Casteel is a person of majority age domiciled in Montgomery, Alabama. She is an investigative reporter with the Southern Poverty Law Center, a non-profit civil rights organization with offices in eight cities, including New Orleans, Louisiana.

7. Defendant Joseph P. Lopinto III is the duly elected sheriff of Jefferson Parish. The Jefferson Parish Sheriff’s Office is a “public body” as that term is used and defined in the PRL. La. R. S. 44:1(A)(1). Defendant has designated records custodians for certain categories of public records his office maintains, such as criminal records and tax records, but has not designated a representative to respond to requests for the kinds of public records Ms. Casteel sought. As the head of the sheriff’s office, Mr. Lopinto is the default custodian for records for which he has not designated a representative. *See* La. R.S. 44:1(A)(3).

III. STATEMENT OF FACT

8. On June 17, 2020, Ms. Casteel submitted a public records request to JPSO, seeking two categories of public records: “Spreadsheets or other records containing aggregated information regarding any and all incidents of excessive force by sheriff’s officers and deputies,” and “All Internal Affairs Reports submitted to the Internal Management Division regarding citizen complaints against officers and deputies of JPSO from 2010 to 2020.” Ex. A.

9. According to the JPSO website, “[t]he Internal Management Division (i.e., “Internal Affairs”) is responsible for receiving, processing, and investigating non-criminal complaints

initiated by citizens against employees or officers of the JPSO.” *See* Complaints | Jefferson Parish Sheriff, LA – Official Website, <https://jpsa.com/274/Complaints> (last visited Mar. 23, 2021).

10. On July 2, 2020, JPSO responded to Ms. Casteel, stating that records containing aggregated information about use of force incidents “do not exist.” Ex. B. JPSO also objected to Ms. Casteel’s request for Internal Affairs records, stating that “your request for Internal Affairs reports regarding citizen complaints against JPSO officers from 2010-2020 is overly broad and burdensome. Individuals have a right to privacy and release of the complaints requested, which may or may not be substantiated, rises to an invasion of that privacy.” *Id.*

11. On July 7, 2020, Ms. Casteel responded to JPSO’s denial with a series of questions regarding the absence of records aggregating use of force data, as permitted by La. R.S. 44:34, and disputed JPSO’s basis for withholding Internal Affairs records. Ex. C. JPSO requested a phone conference to discuss Ms. Casteel’s response.

12. On July 8, 2020, Ms. Casteel, undersigned counsel, and JPSO legal advisor, Lindsey Valenti, participated in a conference call to discuss Ms. Casteel’s public records request. Ms. Valenti represented that JPSO’s record-keeping system does not allow it to produce records that aggregate use of force incidents.

13. Ms. Valenti also maintained JPSO’s objections to disclosing Internal Affairs records, but offered to confer with Sheriff Lopinto after hearing Ms. Casteel and her counsel’s arguments as to why such records could not be withheld. Ms. Valenti asked that Ms. Casteel narrow her request for Internal Affairs records in order to facilitate the sheriff’s reconsideration of her request.

14. That same day, Ms. Casteel sent Ms. Valenti a revised public records request containing a request for a narrower set of Internal Affairs records. Ex. D.

15. Over a month later, on August 18, 2020, Ms. Valenti, Ms. Casteel, and undersigned counsel again participated in a conference call to discuss Ms. Casteel’s revised public records request.

16. On the call, Ms. Valenti represented that JPSO has in its possession one substantiated Internal Affairs report related to excessive use of force, numerous CIB reports related to officer-involved shootings, and numerous complaints regarding excessive use of force that JPSO Internal

Affairs has deemed unsubstantiated.¹ Ms. Valenti agreed that JPSO would produce the CIB reports and the single substantiated Internal Affairs report for inspection. *See* Ex. E. JPSO did not agree to produce the unsubstantiated Internal Affairs reports.

17. On September 2, 2020, Ms. Casteel received a letter from JPSO's Central Records commander, repeating JPSO's prior objections to Ms. Casteel's request for Internal Affairs records and requesting a payment of \$2,305 to proceed with processing the remainder of her request. Ex. F.

18. Ms. Casteel requested that undersigned counsel be permitted to inspect the records JPSO was willing to disclose in person and make copies using his own equipment at no cost. JPSO scheduled an appointment for Mr. Gaffney for October 7, 2020.

19. On October 7, 2020, Mr. Gaffney travelled to JPSO's office intending to inspect JPSO's records and make copies using his own equipment. JPSO permitted Mr. Gaffney to visually inspect the records using their computer system, but would not allow him to make copies using any kind of technology. The only options to access these public records that JPSO would permit were visual inspection at their offices, or to pay JPSO \$2,305 for JPSO to make copies.

20. On October 13, 2020 Ms. Casteel wrote to JPSO explaining that denying Mr. Gaffney the option to reproduce the public records himself using his own equipment violated the PRL. Ms. Casteel also reiterated that JPSO had no valid basis to withhold certain Internal Affairs records, and JPSO's decision to withhold some Internal Affairs records while disclosing others was arbitrary and capricious. Ex. G.

21. On October 23, 2020 JPSO responded, claiming the PRL did not require the office to allow Mr. Gaffney to make his own copies, and arguing again that Internal Affairs records were protected from disclosure under the Fourth Amendment to the United States Constitution as well as the article 1, section 5 of the Louisiana Constitution. Ex. H.

¹ For ease of description and categorization of the disputed records, Petitioner adopts Defendant's reference to these complaints as "unsubstantiated" throughout this Petition. Petitioner's use of the term "unsubstantiated" in relation to the records is in no way meant to concede the determination on the underlying complaint.

**IV. CAUSES OF ACTION – VIOLATIONS OF THE LOUISIANA PUBLIC
RECORDS LAW**

22. The Louisiana Public Records law defines “public records” to be “all books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state. . .” La. R. S. 44:1(A)(2)(a).

23. Unless otherwise provided in law, any person of the age of majority may inspect, copy, or reproduce any public record. La. R. S. 44:31(B)(1).

24. Providing access to public records is a responsibility and duty of the elective office of a custodian and his employees. La. R. S. 44:31(A).

25. The public’s right of access to public records is a fundamental right, guaranteed by the Louisiana Constitution. *Title Research Corp. v. Rausch*, 450 So. 2d 933, 936 (La. 1984) (citing La. Const. art. 12 § 3).

26. This right must be “construed liberally in favor of free and unrestricted access to the records[.]” *Id.*

27. Access can be denied “only when a law, specifically and unequivocally, provides otherwise.” *Id.* “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.” *Id.*

28. “The legislature by the public records statutes sought to guarantee, in the most expansive and unrestricted way possible, the right of the public to inspect and reproduce those records which the laws deem to be public.” *Id.*

A. The PRL Requires JPSO to Allow Requestors to Reproduce Records Using Their Own Equipment and at Their Own Expense.

29. The PRL “gives to any person of the age of majority the right to choose from four options: he may inspect the records; he may copy the records; he may reproduce the records; or he may obtain, from the custodian, a reproduction of the records.” *Id.* at 937.

30. “The statute is clear and unambiguous in its grant of these alternate rights, and it also is clear that the choice of which optional right to exercise rests with the one requesting the records and not with the custodian.” *Id.*

31. The right to “copy or reproduce any public record,” La R.S. 44:31(B)(1), is distinct from the right to “obtain a copy of reproduction of any public record” from a custodian, La. R.S. 44:31(B)(2), for which the custodian may charge “reasonable fees,” La. R.S. 44:31(C)(1)(a). A records custodian may not charge a requestor who reproduces a public record using his own means. *Title Research Corp.*, 450 So. 2d at 938.

32. A records custodian may not deny a requestor the right to reproduce a record using his own equipment because there is a risk that doing so may damage or alter the underlying record. *See id.* (rejecting custodian’s argument that the risk of damage to public records posed by copying “justifies excluding a member of the public from exercising his rights”); *see also Johnson v. City of Pineville*, 2008-1234 (La. App. 3 Cir. 4/8/09); 9 So. 3d 313 (rejecting custodian’s argument that allowing requestor to make a CD copy of electronic files would threaten the “integrity” of the records).

33. Nor may the custodian restrict the requestor’s “choice of medium” when making his reproductions. *Title Research Corp.*, 450 So. 2d at 938. Voluminous records that were created and maintained electronically must be available to the public for reproduction electronically. “To allow [custodians] to create such voluminous records using information technology and then deny the use of that same technology to the public reviewing those records would strike directly at the heart of the public’s fundamental right of access to public records that is guaranteed by the Louisiana Constitution.” *City of Pineville*, 2008-1234 at p. 9; 9 So. 3d at 319.

34. The law thus requires JPSO to allow Ms. Casteel or her representative to reproduce public records using their own equipment, at their own expense, and in an electronic format if desired.

JPSO cannot deny this right because of a generalized and unsubstantiated concern about the security of their recordkeeping system. The Constitution and the Legislature have imposed a duty of access on JPSO, and it is incumbent upon the office as a public body to make public records accessible as the law requires.

B. Subjects of Internal Affairs Investigations Do Not Have a Reasonable Expectation of Privacy over Those Records.

35. An individual's constitutional right to privacy can limit the public's constitutional right to access and observe public records, but only in cases where there is an objectively reasonable expectation of privacy in the public record, and the privacy interest outweighs the public interest in disclosure. *Cap. City Press v. E. Baton Rouge Par. Metro. Council*, 96-1979, p. 9 (La. 7/1/97); 696 So. 2d 562, 566; *see also Shane v. Par. of Jefferson*, 2014-2225, p. 19 (La. 12/8/15); 209 So. 3d 726, 741 ("The right of privacy is also limited by society's right to be informed about legitimate subjects of public interest.").

36. Accordingly, Louisiana courts analyze assertions of privacy over public records by applying a two-step test, asking first whether an individual's expectation of privacy "is of a type which society at large is prepared to recognize as being reasonable." *Id.* If it is, courts then apply a balancing test to determine whether the individual privacy interest outweighs the public's interest in accessing the public records. *Id.*

37. To determine whether there is an objectively reasonable expectation of privacy, courts look to the actions of the Legislature as evidence of what society at large views as reasonable. *See, e.g., Skamangas v. Stockton*, 37,996, p. 8 (La. App. 2 Cir. 3/5/04); 867 So. 2d 1009, 1014 ("This reasonable expectation of privacy is embodied in La. R.S. 40:2532..."); *Cap. City Press*, 96-1979, p. 8 (La. 7/1/97); 696 So. 2d 562, 566 ("Therefore, it is significant that the legislature has not provided for an exception for employment applications in Louisiana's public records law...").

38. This method is consistent with the Louisiana Supreme Court's well-settled rule of public records law that "access to public documents can only be denied when a law, specifically and unequivocally, provides otherwise." *Cap. City Press*, 96-1979, p. 8 (La. 7/1/97); 696 So. 2d 562, 566 (citing *Title Research Corp.*, 450 So. 2d at 936).

39. The Legislature has specifically exempted from disclosure only several narrow categories of personal information regarding a law enforcement officer under investigation: the officer's home address and phone number, his photograph, his Social Security number, his driver's license number, and his P.O.S.T database username. La. R.S. 40:2532; *see also* La. R.S. 44:4.1(26) (listing La. R.S. 40:2532 as an exemption to the PRL); La. R.S. 15:1212.1(E); *see also* La. R.S. 44:4(54) (listing 15:1212.1(E) as an exemption to the PRL).

40. Aside from these narrow categories of personal information, the Legislature has not recognized a privacy interest over information which may be contained in a public record like an Internal Affairs file.

41. Following the Legislature's guidance, three Louisiana courts of appeal have held that law enforcement officers do not have an objectively reasonable expectation of privacy over Internal Affairs files, aside from in the personal information listed by statute. Each has held that there is an objective privacy interest over *personal* information contained in an internal affairs file, like that listed by statute, but no privacy interest over *public* information, such as allegations about an officer's misconduct while performing his public duties.

42. In *City of Baton Rouge/Parish of East Baton Rouge v. Capitol City Press, L.L.C.*, 2007-1088 (La. App. 1 Cir. 10/10/08); 4 So. 3d 807, the First Circuit held that Internal Affairs Division files of the Baton Rouge Police Department must be disclosed under the PRL. The Court found that the personal information that the Legislature deemed private at La. R.S. 40:2532 "embodied" the reasonable expectation of privacy a law enforcement officer may have over information in an Internal Affairs file. *Id.* at 18; 4 So. 3d at 819. Personal information like home addresses and photographs should be redacted, but the remainder of the files must be released because they "were not related to private facts; the investigations concerned public employees' alleged improper activities in the workplace." *Id.* at 21; 4 So. 3d at 821. "The public has an interest in learning about the operations of a public agency [and] the work-related conduct of public employees," the court explained. *Id.*

43. In *Beckett v. Serpas*, 2012-1349 (La. App. 4 Cir. 3/20/13); 112 So. 3d 348, the Fourth Circuit followed the First Circuit's rationale, finding that "a law enforcement officer has a reasonable expectation of privacy as to certain personal information, i.e., home address, telephone

number, social security number, medical information,” and that such information must be redacted before disclosure. *Id.* at 7; 112 So. 3d at 353. Other information, however, is accessible to the public under the PRL.

44. And in *Skamangas v. Stockton*, 37,996 (La. App. 2 Cir. 3/5/04); 867 So. 2d 1009, the Second Circuit held that an officer’s “reasonable expectation of privacy is embodied in La. R.S. 40:2532,” and thus Internal Affairs files were not categorically exempt from disclosure under the PRL. *Id.* at 8; 867 So. 2d at 1014. Citing approvingly of other state cases disclosing Internal Affairs files, the Second Circuit noted that “officers’ actions while performing public duties or improper off-duty actions in public which bore upon their ability to perform their public office were not activities protected as matters of personal privacy, and a reasonable person would not be offended by disclosure.” *Id.* at 12; 867 So. 2d at 1016.

45. These three courts of appeal also recognized the overwhelming public interest in accessing information about alleged misconduct of public employees, as well as information about the steps that a public agency takes to investigate and correct any abuses of the public trust. “It would be an incongruous result to shield from the light of public scrutiny the workings and determinations of a process whose main purpose is to inspire public confidence.” *City of Baton Rouge/Par. of E. Baton Rouge*, 2007-1088, pp. 21–22 (La. App. 1 Cir. 10/10/08); 4 So. 3d 807, 821.

46. In defense of its decision to categorically withhold all unsubstantiated Internal Affairs files, JPSO invoked the Fourth Amendment to the United States Constitution and cited a case from this circuit regarding an employee’s personnel files, *East Bank Consolidated Special Services Fire Protection District v. Crossen*, 04-838 (La. App. 5 Cir. 12/28/04); 892 So. 2d 666.

47. The Fourth Amendment protects citizens against unreasonable searches and seizures by the government. It does not protect the government from public scrutiny. Such an inversion would be profoundly antidemocratic, and the Sheriff’s argument for such is disturbing.

48. The Sheriff’s reliance on *Crossen* is also unavailing. In *Crossen*, the Fifth Circuit held that there was a reasonable expectation of privacy in certain employment records, such as “records of...disciplinary actions, reprimands, apologies, and other personnel documents.” 04-838, p. 6 (La. App. 5 Cir. 12/28/04); 892 So. 2d 666, 670. The Court based its opinion on other Louisiana cases involving requests for employment records like performance evaluations, employee grievances,

and employee union affiliation. *Id.* (citing *Trahan v. Larivee*, 365 So. 2d 294 (La. App. 3 Cir. 1978); *Broderick v. State, Dep't of Env'tl. Quality*, 2000-0156 (La. App. 1 Cir. 5/12/00); 761 So. 2d 713; *Local 100, Serv. Employees, Int'l Union v. Smith*, 36,454 (La. App. 2 Cir. 10/23/02); 830 So. 2d 417).

49. *Crossen* and its citations are inapplicable here for the simple reason that Internal Affairs files are not employment records. They are citizen- or officer-generated investigations into allegations of illegal or unprofessional conduct committed by JPSO officers and employees. They may result in internal discipline, or even a criminal investigation. Internal Affairs investigations are more like law enforcement investigative records, which are indisputably disclosable public records, than the personnel files sought after and cited in *Crossen*.

50. The employment records deemed private in *Crossen* and other cases involved an employee's job performance, job satisfaction, or other aspects of an employee's *personal* conduct in the workplace. Internal Affairs files concern the conduct of JPSO employees when interacting with the public and performing public-facing duties. They are, as the First Circuit noted, records of the "operations of a public agency, the work-related conduct of public employees...The public should be ensured that both the activity of public employees suspected of wrongdoing and the conduct of those public employees who investigate the suspects is open to public scrutiny." *City of Baton Rouge/Par. of E. Baton Rouge*, 2007-1088, p. 21 (La. App. 1 Cir. 10/10/08); 4 So. 3d at 821 (quotation marks and citations omitted).

51. Finally, the PRL devotes an entire statute to classification of records held by prosecutive, investigative, and law enforcement agencies. *See* La. R.S. 44:3. The statute describes in detail those law enforcement records precluded from disclosure:

(1) Records pertaining to pending criminal litigation² or any criminal litigation which can be reasonably anticipated, until such litigation has been finally adjudicated or otherwise settled . . . ; or

² The First Circuit has defined "criminal litigation" as an "adversarial contest begun by formal accusation and waged in judicial proceedings in the name of the State, by the district attorney, on the one hand, and against the defendant, on the other." *Nix v. Daniel*, 95-1393, p. 3 (La. App. 1 Cir. 2/23/96); 669 So.2d 573, 574. Publicly available information from JPSO additionally distinguishes between non-criminal complaints managed by Internal Affairs and criminal complaints, which are "handled by the Criminal or Special Investigation Bureaus." *See* Complaints | Jefferson Parish Sheriff, LA – Official Website, <https://jpso.com/274/Complaints> (last visited Mar. 31, 2021).

(2) Records containing the identity of a confidential source of information or records which would tend to reveal the identity of a confidential source of information; or

(3) Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments collected or obtained in the prevention of terrorist-related activity, including but not limited to physical security information, proprietary information, operational plans, and the analysis of such information, or internal security information; or

(4)(a) The records of the arrest of a person, other than the report of the officer or officers investigating a complaint, until a final judgment of conviction or the acceptance of a plea of guilty by a court of competent jurisdiction. . . .

La. R.S. 44:3(A)

52. Notably, the list of records excluded from disclosure makes no mention of Internal Affairs investigations or other non-criminal complaints. Nor has Defendant, in the course of significant negotiation, claimed application of any law enforcement exception to the PRL.

V. CLAIMS

53. JPSO's refusal to allow Ms. Casteel's representative to make reproductions of public records using his own equipment violates the PRL. JPSO is required by law to allow requestors to "copy or reproduce any public record," La. R.S. 44:31(B)(1), using their own means, at their own expense, and in the medium of their choosing.

54. JPSO's categorical refusal to disclose unsubstantiated Internal Affairs files responsive to Ms. Casteel's request also violates the PRL. There is no objectively reasonable expectation of privacy over the contents of public agency investigations into the alleged misconduct of public employees committed while performing public duties. Even if there were, that private interest would be outweighed by the public's interest in disclosure.

VI. REQUEST FOR RELIEF

WHEREFORE, petitioner prays:

1. That a writ of mandamus be issued directing defendant to permit petitioner or her representative to reproduce public records using their own equipment and at no expense; and
2. That a writ of mandamus be issued directing defendant to produce Internal Affairs records responsive to petitioner's request; and

3. For an award of attorneys' fees and costs as provided by law.

Respectfully submitted,



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Kathryn Casteel,
Petitioner,

vs.

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DEPUTY CLERK

RULE TO SHOW CAUSE

Considering the foregoing Petition for a Writ of Mandamus:

IT IS HEREBY ORDERED that Defendant show cause on the _____ day of _____, 2021 why he should not be ordered to produce the public records sought by Petitioner in this matter and permit Petitioner or her representative to make reproductions of those records;

IT IS FURTHER ORDERED that Defendant further show cause on the above date why judgment should not be rendered against him for attorney's fees and costs of this civil action, as well as for any damages provided by law.

Gretna, Louisiana, this _____ day of _____, 2021.

District Judge