

Civil District Court for the Parish of Orleans
STATE OF LOUISIANA

No: 2019 - 01916

Division/Section: N-08

BIXBY, LAURA
versus
ARNOLD, COLLIN ET AL

Date Case Filed: 2/20/2019

NOTICE OF SIGNING OF JUDGMENT

TO:

Bruce W Hamilton Esq 33170
909 Poydras Street, Suite 2400
New Orleans, LA 70112

Jezreel C Joseph Esq 35410
287 Melius Dr
Reserve, LA 70084

Katharine M Schwartzmann Esq 30295
4400 S Carrollton Avenue
New Orleans, LA 70119

Jamila A Johnson Esq 37953
1055 Saint Charles Ave Ste 505
New Orleans, LA 70130

Conor S Gaffney Esq 38225
201 St. Charles Avenue
Suite 2000
New Orleans, LA 70170

Anita B Curran Esq 29815
1300 Perdido St
Ste 5E03
New Orleans, LA 70112

Alanah E Odoms Esq 31904
3500 Hullen Street
Metairie, LA 70002

In accordance with Article 1913 C.C.P., you are hereby notified that Judgment
in the above entitled and numbered cause was signed on May 3, 2019

New Orleans, Louisiana
May 3, 2019


MINUTE CLERK

Norlita Parker Wells, Minute Clerk
Division "N"
BY ORDER OF THE COURT

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO: 19-1916

DIVISION "N"

SECTION 8

LAURA BIXBY

VERSUS

COLLIN ARNOLD

JUDGMENT

This matter came before the court on March 14, 2019, a Writ of Mandamus filed on behalf of plaintiff. At the close of oral argument, the court granted counsel leave of court to file post-hearing memoranda of law. Those memoranda have now been submitted.

**PRESENT: Bruce Hamilton, Katie Schwartzmann, Jamila Johnson,
and Conor Gaffney Counsel for Plaintiff, Laura Bixby**

**Jezreel C. Joseph, Anita Curran, and Alanah Odoms Herbert,
Counsel for Defendant, Colin Arnold**

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment herein in favor of Plaintiff, Laura Bixby and against Defendant, Colin Arnold granting Plaintiff's Writ of Mandamus directing Defendant, Colin Arnold to release the following public record(s): Any map or maps which the City maintains showing the location of all publically visible real time crime cameras, not including traffic/red light/school zone cameras, at the present date.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there be there be judgment herein in favor of Plaintiff, Laura Bixby and against Defendant, Colin Arnold awarding Plaintiff reasonable attorney's fees and costs as mandated by La. R.S. 44:35(D).

New Orleans, Louisiana this 3 day of May, 2019.


JUDGE ETHEL S. JULIEN

A TRUE COPY

DEPUTY CLERK, CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA.

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO: 19-1916

DIVISION "N"

SECTION 8

LAURA BIXBY

VERSUS

COLLIN ARNOLD

REASONS FOR JUDGMENT

FACTS:

On August 9, 2018, Plaintiff, Laura Bixby (Plaintiff), a public defender made a public records request pursuant to La. R.S. 44:31, directing City of New Orleans employee Defendant, Collin Arnold, in his official capacity as records custodian for the New Orleans Department Security and Emergency Preparedness [NOHSEP] to produce:

- 1) any map or maps which the City maintains showing the location of all PUBLICALLY VISIBLE real time crime cameras. [Plaintiff asserts that there are more than 400 publicly-visible cameras and at a "recent" public meeting, Real Time Crime Center Administrator Ross Bourgeois affirmed that there are "no covert cameras."]
- 2) any policies governing the keeping of records of locations of such cameras of past dates; and,
- 3) records or policies regarding the number and type of staff employed at the Real Time Crime Center. [See plaintiff's request.]

On August 14, 2018, the New Orleans City Attorney's Office responded on behalf of defendant, Collin Arnold and NOHSEP by denying the first and second requests but providing records responsive to the third request.

The responses to the first and second requests were as follows:

- 1) As to Request No. 1:

Records responsive to your first request regarding the location of the City's crime cameras are exempt from disclosure under the Public Records Law because they are records regarding investigative technical equipment and physical security information created in the prevention of terrorist-related activity... [See paragraph 11 in the Petition and the Amended Petition.]

- 2) As to Request No. 2, the City Attorney stated "The Office of Homeland Security and Emergency Preparedness does not have records responsive

to your second request regarding policies governing keeping records of locations of cameras.”

[See paragraph 11 in the Petition and Amended Petition.]

Plaintiff then filed a Petition For Writ of Mandamus pursuant to the Louisiana Public Records Law, La. R.S. 33:35(A); and, Plaintiff seeks penalties pursuant to La. R.S. 35(E) and 44:37 due to Defendant’s alleged intentional, unreasonable, and arbitrary denial of these valid public records [See the prayer in the Petition and the Amended Petition.]

LAW:

The public’s right of access to public records is a fundamental right, guaranteed by the Constitution. Which “must be construed liberally in favor of free and unrestricted access to the records.” [Title Research Corp. v. Rausch, 450 So.2d 933, 936 (La. 1984).]

Access can be denied “only when a law, specifically and unequivocally, provides otherwise.” [Title Research Corp., supra.] “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.” [Title Research Corp., supra.]

The burden of proving “that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian.” [La. R.S. 44:31(B)(3).]

La. R.S. 44:35 (D) provides that should Plaintiff prevail, he/she shall be awarded reasonable attorney’s fees and costs. La. R.S. 44:35(E) further provides for civil penalties if the custodian arbitrarily or capriciously withheld the requested record. And, La. R.S. 44:37 provides for fines if the custodian who by conspiracy, understanding, or cooperation with any other person hinders or attempts to hinder the inspection of any public records declared to be subject to inspection.

REASONS FOR JUDGMENT:

While the NOHSEP relies on two exceptions to the Public Records Law to deny Plaintiff access to the requested records, the court finds that neither of the exceptions set forth in La. R.S. 44:3(A) or 44:3(A)(3) apply.

La. R.S. 44: 3(A)(3) exempts production of the records of investigators

LAURA BIXBY VERSUS COLLIN ARNOLD

and intelligence agencies. However, the court finds that NOHSEP is not one of the investigatory or law enforcement agencies covered by this exception.

NOHSEP is a City department in charge of planning and coordinating various emergency and disaster relief responses. It manages the Real Time Crime Center and coordinates emergency responses. It is not a police department. It neither investigates nor prosecutes crimes.

La. R.S. 44:3(A)(3) exempts the production of records containing:

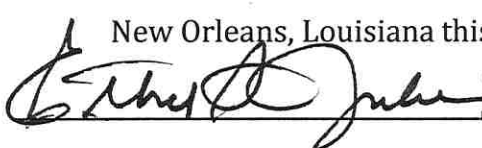
security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments collected or obtained in 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.

There is no evidence that NOHSEP is a subsidiary of the Department of Homeland Security of the United States or that the publically-visible cameras are used in the prevention of terrorism.

For these reasons, the court grants the writ of mandamus and directing Defendant, Colin Arnold to release the following public record(s): Any map or maps which the City maintains showing the location of all publically visible real time crime cameras, not including traffic/red light/school zone cameras, at the present date.

Pursuant to La. R.S. 35 (D), as Plaintiff has prevailed on her writ, the court awards Plaintiff reasonable attorney's fees and costs. However, the court finds that there is no evidence that Defendant arbitrarily or capriciously withheld the requested records or that Defendant conspired or cooperated with another to hinder the inspection of the records. Therefore, the court denies Plaintiff's request for the penalties set forth in La. R.S. 44:35(E) and 44:37.

New Orleans, Louisiana this 3 day of May, 2019.

 JUDGE ETHEL S. JULIEN

A TRUE COPY

 DEPUTY CLERK, ORLEANS DISTRICT COURT
 PARISH OF ORLEANS
 STATE OF LA.