

FILED
2019 FEB 20 P 2:08

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

CIVIL DISTRICT COURT

STATE OF LOUISIANA

NO. 19-01916

DIVISION N

SECTION: 8

LAURA BIXBY

VERSUS

COLLIN ARNOLD

FILED: _____

DEPUTY CLERK

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

NOW INTO COURT, through undersigned counsel, comes petitioner Laura Bixby, who requests, pursuant to Article XII, Section 3 of the Louisiana Constitution of 1974, La. R.S. 44:31 *et seq.*, and other applicable law cited herein, that this Court issue a Writ of Mandamus directing City of New Orleans (the “City”) employee Collin Arnold, in his official capacity as records custodian for the New Orleans Department of Homeland Security and Emergency Preparedness (“NOHSEP”) to provide Petitioner with public records in the City’s possession. In addition, Petitioner seeks penalties for violation of the State public records law.

In support of this Petition, Petitioner states the following:

I. INTRODUCTION

1. This is a case brought under Louisiana’s Public Record Law (“PRL”) about the City’s failure to provide public records of the locations of more than 400 publicly-visible cameras, operated by the City and funded by taxpayers, to a public defender who properly sought these records.

2. In 2017, the City unveiled a \$40 million Citywide Public Safety Improvement Plan. This plan enhanced lighting throughout the city, refigured traffic patterns in pedestrian-heavy areas, and modified alcohol licensing requirements. It also funded the expansion of a video surveillance network and the construction of the 24/7 Real-Time Crime Center (“RTCC”) at 517 N. Rampart Street.

3. NOHSEP operates the RTCC, which receives footage from more than 400 publicly owned cameras placed in public locations throughout the city and about 120 private cameras not at issue in this lawsuit. The RTCC cameras surveil neighborhoods across New Orleans, from New Orleans East, to Hollygrove, to Algiers. They constantly observe and monitor the behavior, activities, and locations of the City’s populace. The RTCC cameras are powerful, capable of panning, zooming, and tracking a particular person, location, object, or incident. These cameras can observe public and private spaces alike. On information and belief, NOHSEP possesses a map or other records of the locations of the RTCC cameras, as it is the entity in charge of operating and managing the RTCC.

4. All of the cameras are conspicuous to the public. With the exception of cameras located in the French Quarter, all of them are outfitted with bright blue and red lights that either flash or “steady burn,” drawing attention to their locations. All of them bear official insignia of the City.

5. The locations of the City’s cameras are not secret, and they are not intended to be. In a recent public meeting, RTCC Administrator Ross Bourgeois affirmed that there are “no covert cameras.” During the January 30, 2019 meeting held at the RTCC, Mr. Bourgeois told community representatives, “Everything is overt.”

6. The RTCC provides real-time information to support a variety of City agencies, including the fire department, public works, EMS and the police. RTCC operators relay street flooding information to public works employees, traffic information to emergency vehicles en route, information about storm-related hazards, on-scene information to police officers responding to calls for service. They also support administrative quality of life investigations. Terrorism prevention is not mentioned on the websites of either NOHSEP or the RTCC. Because the proffered purpose of the cameras is to be reactive, rather than proactive, it is unclear how they

could assist in terrorism prevention in any event. Ostensibly, camera operators are only responding to calls for service, not generally and actively surveilling the public.

II. PARTIES

7. Petitioner Laura Bixby is a resident of New Orleans and a staff attorney for the Orleans Public Defenders. Her employer provides representation to poor people who cannot afford to hire a criminal attorney. The location of the City cameras impacts the quality of representation public defenders can provide to people accused of crimes in New Orleans.

8. NOHSEP is a department within the City, supervised by the Chief Administrative Officer and distinct from other departments expressly created by the City's Charter, such as the police department. It is a "public body" as defined by the PRL. La. R. S. 44:1(A)(1).

9. Defendant Collin Arnold is the director of NOHSEP. As such, Mr. Arnold is the records custodian for NOHSEP. La. R. S. 44:1(A)(3).

III. STATEMENT OF FACTS

10. On August 9, 2018, Ms. Bixby made the following public records request to NOHSHEP:

I am requesting:

- 1) Any map or maps which the City maintains showing the location of all PUBLICLY VISIBLE (in other words, red and blue lights and the NOPD logo) real time crime cameras, not including traffic/red light/school zone cameras, at the present date;
- 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.

A copy of this request is attached at Exhibit A.

11. On August 14, 2018, the New Orleans City Attorney's Office responded on behalf of Mr. Arnold and NOHSEP by denying the first and second requests, but providing records responsive to the third request. In response to the first request, it issued the following denial:

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. . . .

In response to the second request, 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.”

12. Footage from RTCC cameras is routinely used in the prosecution of crimes in the city. In her role as a public defender, Ms. Bixby obtained video footage that demonstrates the cameras’ capabilities. In the video, the camera panned toward a group of men on a street corner and zoomed in from several hundred feet away. Within minutes of the camera focusing on the group of men, several New Orleans police officers arrived on the scene and arrested a man who would later become a client of the Orleans Public Defenders.

13. Ms. Bixby seeks a map of the RTCC cameras in her role as a public defender. A map of the cameras is necessary to provide her clients an effective and constitutional level of defense. RTCC cameras are as capable of capturing exonerating evidence as they are capable of capturing incriminating evidence. Alibis and misidentifications can be proven as readily as identifications and implications. As a matter of fairness and balance in the criminal justice system, RTCC footage should be as accessible to the defense as it is to law enforcement and prosecutors.

14. Ms. Bixby also believes that the residents of New Orleans have a basic right to know where the RTCC cameras are located. These cameras are powerful tools of government surveillance and may monitor places where people have legitimate expectations of privacy, like enclosed yards, patios, or interior rooms visible through windows.

IV. STATEMENT OF LAW

15. The public’s right of access to public records is a fundamental right, guaranteed by the Constitution. *Title Research Corp. v. Rausch*, 450 So. 2d 933, 936 (La. 1984) (citing La. Const. art. 12, § 3, which must be “construed liberally in favor of free and unrestricted access to the records”). 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.*

16. A writ of mandamus “may be directed to a public officer to compel the performance of a ministerial duty required by law,” La. C.C.P. art. 3863. This writ is appropriate to compel Defendant to abide by his statutory duty to produce the records requested by Petitioner.

17. Suits filed under the PRL “shall be tried by preference and in a summary manner.” La. R.S. 44:35(C).

18. 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).

V. CLAIM

19. Defendant’s response to Petitioner’s request violates the PRL. Mr. Arnold does not claim that the requested map does not exist, nor does he claim that the map is out of the custody or control of NOHSEP. The Defendant refused to provide a map, citing exceptions to the PRL that are inapplicable to Ms. Bixby’s request. Such denial is arbitrary and capricious.

20. The Defendant has no interest, compelling or otherwise, in keeping secret the locations of cameras that are not only publicly visible, but overt, conspicuous, and readily evident.

21. The Defendant has an obligation to produce a map or make it available for inspection. Rather than comply with Petitioner’s request or attempt to comply, the Defendant has obfuscated the existence and/or location of the records sought.

VI. RELIEF REQUESTED

WHEREFORE, Petitioner prays:

1. That a writ of mandamus be issued directing the Defendant to disclose the records requested or show cause why Defendant should not be ordered to do so, and
2. For an award of attorneys’ fees, damages, sanctions, and costs as provided by law, including, specifically, penalties for intentional, unreasonable, and arbitrary denial of a valid public records request pursuant to La. R.S. 44:35(E) and 44:37.

Respectfully submitted,



Bruce Hamilton, La. Bar No. 33170
Katie Schwartzmann, La. Bar No. 30295
ACLU Foundation of Louisiana
P.O. Box 56157
New Orleans, Louisiana 70156
Telephone: (504) 522-0628
Facsimile: (888) 534-2996

Co-Counsel for Laura Bixby



Jamila Johnson, La. Bar No. 37953
Conor Gaffney, La. Bar No. 38225
Southern Poverty Law Center
201 St. Charles St. #2000
New Orleans, Louisiana 70130
Telephone: (504) 486-8982
Facsimile: (504) 486-8947

Co-Counsel for Laura Bixby

Sheriff please serve:

Collin Arnold
In His Capacity as Records Custodian, Office of Homeland Security and Emergency
Preparedness
1300 Perdido Street
New Orleans, Louisiana 70112

FILED

2019 FEB 20 P 2:08

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

CIVIL DISTRICT COURT

STATE OF LOUISIANA

NO. _____

DIVISION _____

SECTION: _____

LAURA BIXBY

VERSUS

COLLIN ARNOLD

FILED: _____

DEPUTY CLERK

ORDER

Considering the foregoing Petition for Writ of Mandamus filed herein by the Petitioner, Laura Bixby;

IT IS HEREBY ORDERED that the Defendant, Collin Arnold, in his official capacity as custodian of record for The Office of Homeland Security and Emergency Preparedness, be served with the foregoing Petition and a copy of this Order, and that an alternative writ of mandamus shall issue herewith, directing and compelling the Defendant to immediately produce the public record requested, or show cause to the contrary.

IT IS FURTHER ORDERED that a hearing shall be held on the _____ day of _____, 2019, at _____ o'clock ____ .m., and the Defendant shall show cause as to:

- Why said record should not be produced as requested, and why the alternative writ of mandamus issued by this Order shall not be made peremptory and permanent;
- Why Defendant should not be taxed with costs and attorneys' fees, as well as penalties for an arbitrary and capricious failure to comply with the law, and all other equitable and just relief as may be permitted by law.

New Orleans, Louisiana, this _____ day of _____, 2019.

JUDGE

PLEASE SERVE:

Collin Arnold

In His Capacity as Records Custodian, Office of Homeland Security and Emergency
Preparedness
1300 Perdido Street
New Orleans, Louisiana 70112

EXHIBIT A

Request #18-4534

CLOSED

As of December 11, 2018, 4:42pm

FILED

2019 FEB 20 P 2:08

Details

CIVIL
DISTRICT COURT

I am requesting

- 1) any map or maps which the City maintains showing the location of all PUBLICLY VISIBLE (in other words, with red and blue lights and the NOPD logo) real time crime cameras, not including traffic/red light/school zone cameras, at the present date
- 2) any policies governing the keeping of records of locations of such cameras on past dates
- 3) records or policies regarding the number and type of staff employed at the Real Time Crime Center

Received

August 9, 2018 via web

Due

August 14, 2018

Departments

Homeland Security & Emergency Preparedness

Requester

LAURA BIXBY

✉ lbixby@opdla.org

📍 2601 TULANE AVE SUITE 700, NEW ORLEANS, LA 70119

📞 504-827-7051

🏢 ORLEANS PUBLIC DEFENDERS

Documents

Public

(none)

Requester

(none)

Staff

Point of Contact

Admin Law

Timeline

Request Published

Public

August 14, 2018, 3:47pm

Request Closed

Public

Our office has closed this request. Please remit payment and/or schedule an appointment to review records.

Please be advised that records responsive to your request have been compiled and are available for your review, or you may purchase the records for the amount stated in the previous message our office just sent you.

Please contact the City Attorney's Office Public Records Team at 504-658-9800 to schedule a day and time (Tuesdays - Thursdays) to obtain your records.

Fees - We accept cash (please pay exact amount), check, or money order payable to the *City of New Orleans*.

Mail or pick-up - You may remit payment and retrieve the records directly from our receptionist. Or you may mail payment to our office; upon receipt of payment we will mail the records to the address you provide.

Please schedule a day and time with our office *prior* to picking up records to ensure that the records are with the receptionist. Or you may mail payment to our office; upon receipt of payment we will mail the records to the address you provide.

Mail to or pick-up from:

City Attorney's Office
1300 Perdido St., Ste. 5E03
New Orleans, LA 70112

August 14, 2018, 3:46pm

External Message

Requester + Staff

Ms. Bixby:

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. The Public Records Law provides, in pertinent part, as follows:

A. Nothing in this Chapter shall be construed to require disclosures of records, or the information contained therein, held by the offices of the attorney general, district attorneys, sheriffs, police departments, Department of Public Safety and Corrections, marshals, investigators, public health investigators, correctional agencies, communications districts, intelligence agencies, Council on Peace Officer Standards and Training, Louisiana Commission on Law Enforcement and Administration of Criminal Justice, or publicly owned water districts of the state, which records are:

...

(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;
La. Rev. Stat. § 44:3A(3); and

Nothing in this Chapter shall be construed to require disclosure of records containing security procedures, criminal intelligence information pertaining to terrorist-related activity, or threat or vulnerability assessments created,

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.

Id. § 44:3.1. Accordingly, the records responsive to your first request will not be made available for your review.

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.

Records responsive to your third request regarding number of employees at the Real Time Crime Center have been compiled and are available for your review, or you may purchase the records for \$0.50 (1 page @ \$0.50/page).

To review or purchase your records in person, please contact the City Attorney's Office Public Records Team at 504-658-9800 to schedule a day and time Tuesday - Thursday.

Fees - We accept cash (please pay exact amount), check, or money order payable to the *City of New Orleans*.

Mail or pick-up - You may remit payment and retrieve the records directly from our receptionist. Or you may mail payment to our office; upon receipt of payment we will mail the records to the address you provide.

Please schedule a day and time with our office *prior* to picking up records to ensure that the records are with the receptionist. Or you may mail payment to our office; upon receipt of payment we will mail the records to the address you provide.

Mail to or pick-up from:

City Attorney's Office
1300 Perdido St., Ste. 5E03
New Orleans, LA 70112

August 14, 2018, 3:46pm by Admin Law (Staff)

External Message

Requester + Staff

Thank you, our office has received your Public Records Law request. Your request has been forwarded to the City department or office which is the custodian of the records you requested. The custodian will determine whether responsive records exist, and if so, compile the records for your review. Please refer to the due date located on the individual "Request #" page for an estimate of when your records, if any, will be available. This estimated due date may be adjusted depending on the nature of your request.

Note also that records may be in active use at this time and therefore not available for immediate review. Additionally, in accordance with the Louisiana Public Records Law, the City of New Orleans strives to promptly release all records which contain only public information and are not otherwise exempt from the Public Records Law. The City must balance its commitment to open access with its legal obligation to review public records for such exceptions and exemptions prior to release.

As soon as the custodian notifies our office that the records have been compiled and are available for review, we will notify you to schedule a mutually agreeable time to review or purchase copies of the records. Thank you for your request, and we look forward to working with you to provide public records in a fair and efficient manner.

Thank you,
City Attorney's Office
City of New Orleans

August 9, 2018, 2:53pm

Department Assignment

Public

August 9, 2018, 2:53pm

Request Opened

Public

Request received via web

August 9, 2018, 2:53pm
