COURT OF APPEAL, FOURTH CIRCUIT

STATE OF LOUISIANA

DOCKET NO. 2019-CA-0477

LAURA BIXBY
Plaintiff/Appellee

VS.

COLLIN ARNOLD
Defendant/Appellant

On Appeal from the Civil District Court, Parish of Orleans
State of Louisiana
Docket No. 19-1916, Division "N" – Section 8
The Honorable Ethel S. Julien, Judge Presiding

ORIGINAL BRIEF ON BEHALF OF PLAINTIFF/APPELLEE LAURA BIXBY

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I. STATEMENT OF THE CASE

Plaintiff/Appellee Laura Bixby submits this brief in opposition to the appeal filed herein by Defendant/Appellant Collin Arnold, director of the New Orleans Department of Homeland Security and Emergency Preparedness ("NOHSEP"). Mr. Arnold appeals the May 3, 2019 judgment of Judge Ethel S. Julien of the Civil District Court for the Parish of Orleans, which ordered him to produce documents responsive to a Public Records Law request that Ms. Bixby filed on August 9, 2018. R. at 69.

Ms. Bixby submits that the trial court correctly adjudicated this matter by granting a writ of mandamus because the records requested are not exempt from disclosure. The court below correctly held that NOHSEP is not an intelligence agency to which the exemptions of La. R.S. 44:3 apply. R. at 72. Accordingly, the court correctly awarded attorney's fees to Ms. Bixby. R. at 72.

For the first time on appeal, Mr. Arnold makes two contradictory assertions: that the requested records do not exist, and that their disclosure would be unduly burdensome and overly broad. Appellant's Br. 5–6. Neither of these arguments is properly before this Court because Mr. Arnold failed to raise them before the trial court. If the requested records did not exist, Mr. Arnold was required to so inform Ms. Bixby promptly in writing when she made her request. He failed to do so and, instead, asserted the records were exempt from disclosure. R. at 41. He thereby confirmed the records' existence, and he cannot now subvert the course of justice by claiming at the eleventh hour that they do not exist.

Mr. Arnold also failed to raise his "unduly burdensome and overly broad" objection before—he did not raise it in response to the original request, and he did not raise it before the trial court. R. at 31–49. It should go without saying that production of allegedly non-existent records cannot be burdensome, nor can a request for them be overly broad. If the request of existing records were too broad,

Mr. Arnold waived that objection by failing to assert it below. If their disclosure is too burdensome, he likewise waived that objection.

This is a public-records case regarding the locations of publicly funded, conspicuously visible cameras that the City of New Orleans uses to surveil people every day. Ms. Bixby requested "any map or maps which the City maintains showing the location of all PUBLICLY VISIBLE … real time crime cameras[.]" R. at 38. Mr. Arnold denied the request, saying responsive records "are exempt from disclosure because they are 'records regarding investigative technical equipment and physical security information created in the prevention of terrorist-related activity.'" R. at 41. Mr. Arold cited two statutes containing the referenced exemptions: La. R.S. 44:3 and 44:3.1. R. at 43–44. The trial court ordered the records produced, reasoning that the exemptions do not apply. R. at 69–72. This suspensive appeal by Mr. Arnold followed.

On appeal, Mr. Arnold contends that the records are exempt from disclosure, relying exclusively on La. R.S. 44:3.[1] He contends that NOHSEP is an intelligence agency entitled to the protection of La. R.S. 44:3(A); moreover, he claims the maps are records containing "investigative technical equipment." Appellant's Br. 9–13. He also asserts disclosure of the maps is unduly burdensome and overly broad, and that disclosure would hinder criminal investigations. Appellant's Br. 13–16. As of this time he has not produced the requested documents.

II. ISSUES PRESENTED FOR REVIEW

A. Whether the trial court properly found that Mr. Arnold did not meet his burden to establish that NOHSEP is an "intelligence agency" that

[1] Mr. Arnold apparently has abandoned on appeal his argument that the exception contained in La. R.S. 44:3.1 also applies to the requested records.

may invoke the exemption in La. R.S. 44:3(A) to withhold the public records requested by Ms. Bixby.

B. Whether Mr. Arnold should be barred on appeal from introducing evidence not presented at trial and making arguments previously waived.

C. Whether the trial court appropriately awarded attorneys' fees to Ms. Bixby.

III. STANDARD OF REVIEW

"[A] district court's findings of fact in a mandamus proceeding are subject to a manifest error standard of review." *Beasley v. Cannizzaro*, 2018-0520, p. 3 (La. App. 4 Cir. 11/21/18); 259 So. 3d 633, 636; *St. Bernard Port, Harbor & Terminal Dist. v. Guy Hopkins Constr. Co., Inc.*, 16-0907, p. 4 (La. App. 4 Cir. 4/5/17); 220 So. 3d 6, 10. Interpretation of a statute is a question of law. *Clements v. Folse*, 2001–1970, p. 5 (La. App. 1 Cir. 8/14/02); 830 So. 2d 307, 312. When addressing a question of law, this Court conducts a de novo review and renders a judgment on the record. *Times Picayune Publ'g Corp. v. Bd. of Supervisors of La. State Univ.*, 2002-2551, p. 6 (La. App. 1 Cir. 5/9/03); 845 So. 2d 599, 605. In the present case, the judgment of the trial court involves both the trial court's interpretation of a statute—La. R.S. 44:3—and findings of fact.

The trial court made a number of factual findings based on the evidence presented at the mandamus hearing and the supplemental briefing. The lower court found that NOHSEP "neither investigates nor prosecutes crime." R. at 72. It also found that NOHSEP's purpose is "planning and coordinating various emergency and disaster relief responses." *Id.* The trial court further found that there was "no evidence" that the "publically-visible cameras are used in the prevention of

terrorism." *Id.* These findings cannot be disrupted absent manifest error. *Beasley*, 2018-0520, p. 3; 259 So. at 636.

IV. SUMMARY OF ARGUMENT

On appeal, Mr. Arnold assigns errors to the trial court's finding that he failed to prove that his agency, NOHSEP, is an "intelligence agency" under the Public Records Law that can avail itself of certain exemptions to disclosure at La. R.S. 44:3(A). The trial court ruled correctly. It correctly interpreted the term "intelligence agenc[y]" used in the Public Records Law to mean an agency that has an investigative purpose similar to the other kinds of agencies listed at La. R.S. 44:3(A), and it correctly found that Mr. Arnold failed to meet his burden of proof, having offered in briefs and at the hearing only conclusory statements about NOHSEP's mission and evidence about the investigative purpose of *other* law enforcement agencies that NOHSEP supports in part. The trial court did not manifestly err in finding that this evidence failed to make NOHSEP an intelligence agency under the Public Records Law.

Mr. Arnold also raises a new defense for the first time on appeal. He is estopped from presenting a new defense only in front of this Court by basic procedural doctrine, and by the Public Records Law's requirement that a custodian certify the absence of the requested record at the time the request is made. If he does not, as Mr. Arnold did not, he is presumed to have the records sought—a presumption Mr. Arnold affirmed in proceedings below by representing that he was withholding the records at issue.

Finally, Mr. Arnold appears to have abandoned the argument he made at trial that he is exempt from disclosure under La. R.S. 44:3.1. He assigns errors and argues only that the trial court erred in its ruling about the applicability of the exemptions at La. R.S. 44:3.

V. LAW AND ARGUMENT

A. The trial court correctly found that NOHSEP is not an "intelligence agency" under La. R.S. 44:3(A).

Mr. Arnold failed to meet his burden of proving that the requested records are exempt from disclosure and the trial court correctly ordered them released. The Louisiana Constitution provides: "No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law." La. Const. art. XII, § 3. Access can be denied "only when a law, specifically and unequivocally, provides otherwise." *Title Research Corp. v. Rausch*, 450 So. 2d 933, 936 (La. 1984). The trial court rightly found that the burden of proving that the public record[2] was not subject to inspection, copying, or reproduction rested with Mr. Arnold, as he was the custodian. La. R.S. 44:31(B)(3).

Mr. Arnold's sole argument on appeal for denying the request relies on the exemption contained in La. R.S. 44:3(A). However that exemption does not apply to NOHSEP, the trial court correctly found, because NOHSEP is not an intelligence agency.

La. R.S. 44:3(A) exempts only certain records 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

[2] There is no dispute that the maps requested are a public record under Louisiana's Public Records Law. The law defines public records to include all "maps … 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 … any public body[.]" La. R.S. 44:1(A)(2)(a). Appellant concedes that he is the custodian of records for NOHSEP. *See* R. at 33–34, 47. As such, his obligation to produce a properly requested document is unequivocal absent a proper exemption. *See* La. R.S. 44:33.

and Administration of Criminal Justice, or publicly owned water districts of the state[.]"

Offices of emergency preparedness, like NOHSEP, are not enumerated in this list. Instead, Mr. Arnold asserts that his agency counts as an intelligence agency. Although the term is not defined in the Public Records Law, its meaning can be determined through traditional canons of statutory interpretation. La. R.S. 44:3(A) lists "intelligence agencies" among a long and specific series of governmental bodies whose primary mission is law enforcement and criminal investigation. Under the canon of *ejusdem generis*, "intelligence agencies" should be understood to be of the same kind as "police department," "sheriff," "investigator," and "attorney general." These are agencies with legal powers and duties that the trial court found NOHSEP did not share. R. at 72 ("NOHSEP is a City department in charge of planning and coordinating various emergency and disaster relief responses… It is not a police department. It neither investigates nor prosecutes crimes.").

Against the trial court's determination, Mr. Arnold has repeated his previous, conclusory characterization of NOHSEP as an intelligence agency. Mr. Arnold argues that the "mission of NOHSEP illustrates that it is, indeed, an intelligence agency." Appellant's Br. 11. The mission he cites, though, is emergency planning and preparedness. *Id.* at 12. This, the trial court correctly found, is not the same as the mission of a police department or the other investigative agencies listed in La. R.S. 44:3(A). NOHSEP's mission involves "neither investigat[ing] nor prosecut[ing] crimes." R. at 72.

The fatal flaw in Mr. Arnold's reasoning, which the trial court properly rejected, is that he mistakenly equates the gathering and use of *any* information with "intelligence," and he asserts that the use of such "intelligence"—even incidentally—transforms the nature of the agency itself. By that logic, any government department, board, commission, committee, or division could claim

itself to be an "intelligence agency." Because it gathers customer information, the Sewerage and Water Board of New Orleans ("S&WB") would be an intelligence agency. So would the Department of Code Enforcement, which gathers information on blighted properties—information that may be used by the NOPD when it decides where to patrol in a neighborhood. But even if NOHSEP's information gathering and use could be considered "intelligence," which it cannot, the mere act of gathering intelligence would not transform the agency's essential nature into an "intelligence agency" within the meaning of La. R.S. 44:3.

In the federal government, seventeen agencies are considered part of the intelligence community, including the Central Intelligence Agency, the Federal Bureau of Investigation, and the National Security Agency.[3] These agencies are typically associated with espionage, code-cracking, and the collection of *secret* information. By its broadest definition, an "intelligence agency" is concerned with the collection and analysis of information in support of political and military objectives, including national security and/or foreign policy, though it may also support law enforcement. NOHSEP resembles none of these, as it is a "coordinating public safety agency . . . responsible for administering the City's crisis and

[3] The other agencies include the Office of the Director of National Intelligence, the Defense Intelligence Agency, the State Department Bureau of Intelligence and Research, the Homeland Security Department's Office of Intelligence and Analysis, the Drug Enforcement Administration's Office of National Security Intelligence, the Treasury Department's Office of Intelligence and Analysis, the Energy Department's Office of Intelligence and Counterintelligence, the National Geospatial-Intelligence Agency, the National Reconnaissance Office; Air Force Intelligence, Surveillance and Reconnaissance; Army Military Intelligence; Office of Naval Intelligence; Marine Corps Intelligence; and Coast Guard Intelligence. Nina Agrawal, *There's More Than the CIA and FBI: The 17 Agencies That Make Up the Intelligence Community*, L.A. TIMES (Jan. 17, 2017), https://www.latimes.com/nation/la-na-17-intelligence-agencies-20170112-story.html.

consequence management."[4] It is neither an investigative agency nor a law enforcement agency.

Even the federal Department of Homeland Security, of which Mr. Arnold claims NOHSEP is a "subsidiary of sorts," R. at 47, is not itself an intelligence agency—it contains the Office of Intelligence and Analysis, which is one. NOHSEP contains various components, none of which is focused on intelligence-gathering: the Emergency Preparedness Branch, the Public Engagement Branch, the Hazard Mitigation Office, and the Public Safety Support Services Branch.[5]

Throughout his brief, Mr. Arnold erroneously conflates NOHSEP with the Real-Time Crime Center ("RTCC"), which it operates. *See, e.g.*, Appellant's Br. 11 ("NOHSEP (RTCC) is an intelligence agency that utilizes investigative equipment …"; "Because the RTCC operates as an intelligence agency …"). But even if RTCC were itself an intelligence agency, that would not transform NOHSEP into one. By that logic, any government department that contains a subsidiary intelligence agency would itself be considered an intelligence agency. This cannot be the case under La. R.S. 44:3(A) because the subsection already provides express exemptions to agencies that happen to have subsidiary intelligence branches. The Louisiana Department of Public Safety and Corrections, for example, to which La. R.S. 44:3(A) expressly provides a separate exemption, has an Organized Crime Intelligence Division. *See* La. R.S. 40:1307.1. The existence of this subsidiary intelligence division within the Department of Public Safety does not mean the Department may invoke La. R.S. 44:3(A)'s exemptions as both an "intelligence agency" and the "Department of Public Safety and Corrections." La. R.S. 44:3(A). "[C]ourts are bound…to construe no sentence, clause or word as meaningless and

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[4] *See* Homeland Security – City of New Orleans, https://www.nola.gov/homeland-security (last visited July 26, 2019).

[5] *Id.*

surplusage." *Moss v. State*, 2005-1963, p. 15 (La. 4/4/06); 925 So. 2d 1185, 1196. Similarly, the Louisiana State Police, which contains a Criminal Intelligence Unit, would be both an "intelligence agency" and a "police department" under Mr. Arnold's expansive reading, as would countless other agencies that have intelligence divisions.

What distinguishes NOHSEP from an intelligence agency is its broad mission of coordinating public safety and its role supporting other public safety entities such as the Fire Department. It does not engage in espionage or statecraft; it does not gather information for political, foreign policy, or military objectives; it does not protect national security. As the trial court held, NOHSEP neither investigates nor prosecutes crimes. R. at 72. Rather, it coordinates disaster relief and emergency responses. Although one aspect of its function is to provide information—through the RTCC—to assist NOPD with its investigations, that limited portion of its overall work is not its primary or defining purpose. NOHSEP's primary proactive work is "all hazards planning," *see* Appellant's Br. 12, which the Louisiana Homeland Security and Emergency Assistance and Disaster Act makes clear does not involve law enforcement or investigation. *See* La. R.S. 29:729(B) (describing the primarily natural disaster-related elements a parish's all hazards plan may contain) *and* (E) (requiring parish offices of homeland security to have specific humanitarian relief plans in place).

Similarly, the RTCC's potential role in the prevention of terrorism activity does not transmogrify NOHSEP into an intelligence agency. As the trial court found, there is no evidence that NOHSEP is a subsidiary of the federal Department of Homeland Security or that its publicly visible cameras are used in the prevention of terrorism. R. at 72. Appellant apparently relies on an implicit association between terrorism-prevention and intelligence, but he has offered no evidence to show that NOHSEP prevents terrorism, much less that it uses "intelligence" to do so.

In short, because NOHSEP is not one of the offices listed in La. R.S. 44:3(A), it cannot exempt itself from the mandates of the Public Records Law. This is true under a plain reading of the statute, and that truth is only strengthened by this Court's requirement that exemptions from disclosure should be narrowly construed. *Treadway v. Jones*, 583 So. 2d 119, 121 (La. App. 4 Cir. 1991) (all exceptions to the Public Records Law "are in derogation of the public's right to know how government affairs are conducted"). NOHSEP is not entitled to avail itself of the exception, and it must disclose the requested records as the trial court ordered it to do.

B. The trial court correctly found that the records withheld by Mr. Arnold are not the kind of records La. R.S. 44:3(A) exempts from disclosure.

In addition to ruling that NOHSEP is not the kind of agency La. R.S. 44:3(A)'s exemptions are available to, the trial court determined that the records Mr. Arnold withheld are not the kind of records to which the subsection's exemptions apply. The trial court entered a finding of fact that Mr. Arnold presented no evidence that "the publically-visible cameras are used in the prevention of terrorism." R. at 72. The record amply supports this determination. Ms. Bixby, a public defender, argued that RTCC footage routinely appears in criminal prosecutions. R. at 17. Mr. Arnold did not dispute this; in fact, he agreed. R. at 47 ("NOHSEP's Real Time Crime Center ("RTCC") uses technology to provide critical information to first responders and to assist with investigations of criminal activity and quality of life concerns."). The only evidence Mr. Arnold presented (and presented only in supplemental briefing and without testing at a contradictory hearing) is a policy document stating that the City's Closed Circuit Television System—of which there is no claim or evidence the RTCC is a part—serves to fight crime and prevent terrorism.[6] R. at 48. "The public

[6] Mr. Arnold's supplemental brief misquotes the policy as saying the RTCC was created to "prevent potential criminal terrorist activities." The policy states the

records statute requires more than a judicial acceptance of an assertion of privilege by the [custodian]." *Cormier v. Di Guilio*, 553 So. 2d 806, 807 (La. 1989). The trial court did not manifestly err in determining that Mr. Arnold had failed to present sufficient evidence that the records sought by Ms. Bixby contain the criminal intelligence information or threat assessments exempted from disclosure.

Mr. Arnold apparently takes issue with the trial court's finding on appeal, not because he believes it is an erroneous ruling under the Public Records Law's terrorism exception, but because disclosure of such sensitive information would be unduly burdensome.[7] This defense to production, as well as the new claim that the records sought do not exist, were never made in Mr. Arnold's answer to Ms. Bixby's petition or raised at trial. As discussed below, Mr. Arnold cannot raise these new defenses now on appeal.

C. Mr. Arnold—after failing to meet his burden in the trial court—now argues for the first time on appeal that the production of the maps is burdensome and the request overly broad.

1. Mr. Arnold cannot now assert that the maps do not exist.

In a stark departure from his previous arguments to the contrary, Mr. Arnold now asserts that the requested records do not exist. (". . . these 'maps' do not exist and even if they did . . .," Appellant's Br. 5; "maps of the locations of the cameras do not exist . . ."). This new defense contradicts Mr. Arnold's previous claims that he has *withheld* the records at issue. Additionally, the Public Records Law prevents a custodian from making late claims that a record does not exist. Mr. Arnold is estopped from raising a new defense for the first time on appeal under settled

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City's CCTV system was established to "prevent potential criminal and terrorism activities." R. at 50, 52.

[7] Appellant's Br. 15 ("The Trial Court erred when it determined that the crime cameras are not used in the prevention of terrorism."). This claim is made under Assignment of Error 3, that the disclosure of records would be unduly burdensome and overly broad.

procedural law, and under the Public Records Law for his failure to certify the supposed non-existence of these records until now.

The non-existence of a requested record absolves a custodian of his duties of production under the Public Records Law. *See Nungesser v. Brown*, 95-3005 (La. 2/16/96); 667 So. 2d 1036. Pleading that the records Ms. Bixby sought do not exist in his response to her petition for mandamus would have defeated her claim, *see Revere v. Taylor*, 613 So. 2d 738, 739 (La. Ct. App. 4 Cir. 1993), as would proving the records' non-existence at trial, *see Nungesser v. Brown*, 95-1039, p. 8 (La. App. 1 Cir. 10/6/95); 664 So. 2d 132, 136. But Mr. Arnold neither plead this defense in his response to Ms. Bixby's petition, nor raised it in any of the proceedings before the trial court. "An affirmative defense cannot be raised for the first time on appeal." *Allvend, Inc. v. Payphone Commissions Co.*, 2000-0661, p. 6 (La. App. 4 Cir. 5/23/01); 804 So. 2d 27, 30. The reasons for this are ample and well-illustrated by Mr. Arnold's maneuver. This new defense springs a surprise on the appellees, and there is no opportunity for taking or examining evidence of Mr. Arnold's new claim before this Court.

Moreover, Mr. Arnold's claim on appeal that the maps do not exist is dubious, given the fact that his previous arguments both conceded and tacitly confirmed the maps' existence. Mr. Arnold, as the records custodian, is required by the Public Records Law to promptly notify the requestor if the records were not in his custody or control. La. R.S. 44:34, titled "Absence of records," states, "If any public record applied for by any authorized person is not in the custody or control of the person to whom the application is made, such person shall promptly certify this in writing to the applicant …" This law "prescribes the response when the person does not have custody of the records." *All. for Affordable Energy v. Frick*, 695 So. 2d 1126, 1132 (La. App. 4 Cir. 5/28/97). "Under the public records law, the applicant seeking the records is entitled to specific, ample, and detailed information regarding the

whereabouts of the absent records." *Fussell v. Reed*, 664 So. 2d 1214, 1216 (La. App. 1 Cir. 11/9/95). "The contradictory hearing is necessary from the applicant's standpoint, especially if he obtains information which might lead to his finding the absent records, or if he can verify the records have, in fact, been destroyed." *Id.*

In response to Ms. Bixby's records request, Mr. Arnold did not certify in writing that the maps were not in his custody or control. Nor did he assert that they did not exist. Instead, he stated that they are "exempt from disclosure …" *See* R. at 24. Mr. Arnold's failure to assert the maps' non-existence before the trial court is all the more glaring because he explicitly denied the existence of a different, additional record that Ms. Bixby had requested in the same public records request.[8] R. at 25 (NOHSEP "does not have records responsive to your second request regarding policies governing keeping records of locations of cameras").

Mr. Arnold's failure to provide written certification that the maps were not in his custody or control entitled Ms. Bixby to a presumption of their existence. *See Kyle v. Perrilloux,* 2002-1816, p. 8 (La. App. 1 Cir. 11/7/03); 868 So. 2d 27, 31 (noting that district attorney's failure to deny he had custody of records or provide the required written certification supported the presumption that he had the papers in his possession). This presumption is bolstered by the fact that Mr. Arnold's argument before the trial court—that the records are exempt from disclosure—presupposes their existence. R. at 35 ("the requested records was [sic] exempt"); R. at 37 ("[t]he Petitioners request…was denied due to the fact that the requested records are concerning [sic] investigative technical equipment" and stating that Mr. Arnold "cannot be compelled to turn over records that the Department of HSEP has deemed to be exempt and not 'public' records").

[8] The requested policies are not at issue in this appeal; Ms. Bixby does not contest this denial.

Under both the Public Records Law's mechanism for validating the location of public records and settled procedural doctrine requiring all defenses be made with appropriate notice and with appropriate factual testing, Mr. Arnold is estopped from making an about-face argument for the first time on appeal that the records sought do not exist.

2. The effect of disclosure is irrelevant.

Mr. Arnold continues, on appeal, to make arguments that presuppose the maps' existence—that their disclosure would "hinder the prevention of terrorist threats," Appellant's Br. 13–15. If the maps truly did not exist, such arguments would be neither logical nor necessary. Regardless, Mr. Arnold's speculation about the effect of the maps' disclosure is legally irrelevant. Even if it were against public policy to release them—an argument that Ms. Bixby explicitly rejects—that would not excuse Mr. Arnold from his obligation to release them. He cites no "public policy" exception to the Public Records Law because none exists.

Moreover, Mr. Arnold's speculation is unconvincing. He reasons that disclosure of the cameras' locations "will serve as an aid to potential terrorists as they plan their attacks and aid in their escape." Appellant's Br. 16. Mr. Arnold ignores the fact that the locations are already public information, and a potential terrorist can already determine whether a camera is present at a given location in the City. Mr. Arnold also assumes that a potential terrorist would choose a target that is covered by a camera, and that the camera would provide information that would be useful in preventing an attack. Obviously, a camera cannot prevent a spontaneous attack, and it is unclear how it could prevent a planned attack. Regardless, Mr. Arnold's speculation is not a legitimate exception to the Public Records Law.

D. The award of attorney's fees is mandated in this case.

Finally, Mr. Arnold argues that an award of attorney's fees is not warranted because Ms. Bixby should not have prevailed. Yet, Ms. Bixby did prevail, and for

that reason the award is compulsory. *See* La. R.S. 44:35(D) ("If a person seeking the right to inspect, copy, or reproduce a record or to receive or obtain a copy or reproduction of a public record prevails in such suit, he shall be awarded reasonable attorney fees and other costs of litigation."). Mr. Arnold incorrectly asserts that, when a custodian's denial is in good faith and a plaintiff prevails in part, the plaintiff is not entitled to attorney's fees. Appellant's Br. 18. Mr. Arnold misreads the case on which he relies, *Lewis v. Spurney*, 456 So. 2d 206 (La. Ct. App. 4 Cir. 1984), which in fact affirms the settled rule that the Public Records Law mandates a fee award regardless of the good or bad faith of the custodian. As this Court noted, the Legislature drafted the statute so that when a requester prevails in a mandamus suit under the Public Records Law, she "*shall* be awarded reasonable attorney's fees and other costs of litigation." *Ferguson v. Stephens*, 623 So. 2d 711, 715 (La. Ct. App. 4 Cir. 1993) (citing La. R.S. 44:35(D) (emphasis added)).

VI. CONCLUSION

For the foregoing reasons, Ms. Bixby respectfully requests this Court to affirm the trial court's ruling and uphold the trial court's order granting a writ of mandamus directing Collin Arnold to disclose the requested public records.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing pleading has been served on all parties of counsel by depositing a copy of same in the U.S. mail, postage prepaid, and via electronic mail on this 29th day of July, 2019.

Conor S. Gaffney

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CONOR GAFFNEY