IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN
AND FOR BREVARD COUNTY, FLORIDA

ELIZABETH BRADSHAW, Civil Division Case No.:________

Petitioner,

v.

CITY OF MELBOURNE and
DAVID GILLESPIE, as Chief
of Police and Records
Custodian,

Respondents.

________________________/

PETITION FOR WRIT OF MANDAMUS

This petition seeks a writ of mandamus to enforce the public's statutory right to inspect public records pursuant to the Florida Public Records Law. The Petitioner, ELIZABETH BRADSHAW, respectfully petitions this Honorable Court to order Respondents, CITY OF MELBOURNE POLICE DEPARTMENT and DAVID GILLESPIE, as Chief of Police and Records Custodian, to furnish all records related to Melbourne Police Department Case No.: MP90052779. Petitioner also requests an award of attorney's fees and costs.

JURISDICTION

1. This action arises under the authority vested in this Honorable Court by virtue of Art. V § 5(b), Fla. Const.

PARTIES

2. Petitioner is a resident of Brevard County, Florida.

3. Respondent CITY OF MELBOURNE is a municipality within Brevard County, Florida whose Police Department is tasked with investigating alleged law violations within Respondent's boundaries, for which records documenting these investigative efforts are produced.

4. Respondent DAVID GILLESPIE is the Chief of the CITY OF MELBOURNE'S Police Department. DAVID GILLESPIE is the legal custodian of the records at issue in this lawsuit.

5. Respondent CITY OF MELBOURNE maintains its primary place of business at 900 E Strawbridge Avenue, Melbourne, Florida 32901, is a legal resident of Brevard County, Florida and, as a result, DAVID GILLESPIE is amenable to service of process in Brevard County, Florida.

PERTINENT FACTS

6. Petitioner re-alleges paragraphs 1-5 above.

7. The CITY OF MELBOURNE is an agency of the State of Florida, and as such, is governed by the public disclosure requirements of the Florida Public Records Law.

8. DAVID GILLESPIE is the Chief of the CITY OF MELBOURNE'S Police Department. Under the Florida Public Records Law, he is the custodian of the records in question.

9. Under the Florida Public Records Law, a custodian of a public record shall permit a public record to be inspected by any person. Flat Stat. § 119.07(1)(a).

10. On January 09, 2024, Petitioner submitted a request to DAVID GILLESPIE via the Police Department's records request email Pd.records@mlbfl.org, seeking disclosure of public records to include the following:

> "...All records regarding Melbourne Police Department Case No.: MP90052779 including but not limited to: incident reports, supplemental reports, evidence, evidence logs, evidence disposal records, memos, employee notes, emails, probable cause affidavits, inner departmental communications, and external departmental communications." Exhibit 1, Initial Public Records Request.

11. After receiving no response to this request, on April 02, 2024, Petitioner submitted a second request for the same records to DAVID GILLESPIE via Pd.records@mlbfl.org. Exhibit 2, Second Public Records Request.

12. On April 10, 2024, the request was partially fulfilled; however, Respondent's response lacked multiple pertinent items.

13. On April 11, 2024, Petitioner submitted a third request to DAVID GILLESPIE via Pd.records@mlbfl.org advising the fulfillment lacked the following:

"1. No documents were provided indicating an evidence chain of custody or evidence logs after physical evidence items were returned by FDLE to Melbourne PD,

2. No Evidence section disposal orders,

3. No supplemental reports from Detective Nichols,

4. No detective case notes,

5. No internal correspondence,

6. No correspondence regarding a State Attorney filing decision which would have been part of the detective's case file,

7. No evidence disposal Policy & Procedure information; and

8. No Staff Inspections supervisor of the Professional Standards Unit audit of the case (as referenced by Chief of Police Gillespie in a July 2023 news article)." Exhibit 3, Third Public Records Request.

14. On April 22, 2024, Petitioner participated in a teleconference with Respondent's legal counsel, Kellen Simmons, whom advised the records Petitioner requested, to include the Internal Affairs Investigative findings, would be provided "by the end of the week."

15. Respondent provided no additional records.

16. On April 29, 2024, Petitioner submitted a fourth records request to DAVID GILLESPIE via Pd.records@mlbfl.org in which Petitioner advised that the records request was still not completely fulfilled and gave until May 03, 2024 to provide the records. Exhibit 4, Fourth Public Records Request.

17. Petitioner's second and fourth records requests expressly indicated if the records had to be obtained with the assistance of the Courts, that Petitioner would seek award of attorney's fees and costs, pursuant to the protections provided within Florida Statute.

18. DAVID GILLESPIE's record production remains incomplete and does not encompass all non-classified documents in DAVID GILLESPIE's custody that are the subject of Petitioner's request and subject to the Florida Public Records Law. In particular, Petitioner knows, or reasonably believes based on the best available information, that DAVID GILLESPIE possesses the following records that he has yet to produce:

1. Records pertaining to evidence chain of custody or evidence logs after physical evidence items were returned by the Florida Department of Law Enforcement to Melbourne Police Department,
2. Records pertaining to Evidence Division disposal orders,

3. Supplemental reports from Detective Dennis Nichols,
4. Detective case notes,
5. Internal Agency correspondence pertaining to the case,
6. Correspondence regarding a State Attorney filing decision which would have been part of the detective's case file,
7. Records pertaining to Melbourne Police Department's Evidence Disposal policies and procedures, and

8. Records pertaining to Staff Inspections Supervisor of the Professional Standards Unit's audit of the case.

CLAIMS FOR RELIEF:
VIOLATION OF THE FLORIDA PUBLIC RECORDS LAW

19. Petitioner re-alleges paragraphs 1-18 above.

20. The Florida Public Records Law, Fla. Stat. § 119.01(1)(a), states that "every person who has custody of a public record shall permit the record to be inspected." The Law defines "custodian" as "the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records."

21. In order to inspect or copy public records, a person must make a request for records that sufficiently enables the custodian to identify the records. Requests can be made in writing, over the phone, or in person, so long as the request is specific enough to enable the custodian to identify the records. *State ex rel. Cummer v. Pace*, 159 So. 679 (Fla. 1935).

22. While agencies are not subject to specific deadlines to respond to requests to inspect or copy public records, agencies are allowed only "limited reasonable time" to retrieve the records and delete those portions exempt from disclosure. *Tribune Co. v. Cannella*, 458 So.2d 1075, 1079 (Fla. 1984) ("The only delay permitted by the Act is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt.").

23. Petitioner requested access to public records on January 9, 2024;

April 02, 2024; April 11, 2024; and April 29, 2024, seeking all records related to Melbourne Police Department Case No.: MP90052779. These requests were sufficiently detailed to enable DAVID GILLESPIE to locate the requested records.

24. As of the date of the filing of this Petition, DAVID GILLESPIE has only produced the original offense report, initial crime scene report, FDLE Lab report, and Detective Jennifer Frost's supplemental report. Petitioner has not been provided records listed in ¶ 18.

25. More time has elapsed since the request than was reasonably necessary for DAVID GILLESPIE to retrieve the records and delete those portions exempt from disclosure.

26. DAVID GILLESPIE made no indication that any records requested

were exempt from public records request.

27. As such, by Respondent DAVID GILLESPIE's refusal to provide a timely response in accordance with the Florida Public Records Law, by continuing to willfully refuse to provide records responsive to Petitioner's requests, by providing only a partial subset of the records in his custody, and by citing no exemption to disclosure of the records requested, Respondents have violated the Florida Public Records Law, and thereby caused Petitioner to retain legal counsel and to request the desired relief.

PRAYER FOR RELIEF

WHEREFORE, Petitioner ELIZABETH BRADSHAW respectfully requests this Honorable Court:

1. Assume jurisdiction over this matter;

2. Grant Petitioner ELIZABETH BRADSHAW a Writ of Mandamus compelling Respondents CITY OF MELBOURNE and DAVID GILLESPIE to timely produce all requested records and allow Petitioner ELIZABETH BRADSHAW to inspect and/or copy these records;

3. Award reasonable costs and attorney's fees pursuant to Florida Public Records Law § 119.12(1); and

4. Order such additional relief as this Honorable Court may deem just and proper.

Exhibits:

1. Initial Public Records Request (01/09/2024)
2. Second Public Records Request (04/02/2024)
3. Third Public Records Request (04/11/2024)
4. Fourth Public Records Request (04/29/2024)

Dated: July 24, 2024

Very respectfully,

/s/ Damon M. Baxley
Damon M. Baxley
Florida Bar No.: 01027841
KING LAW FIRM
Attorney for Petitioner

KING LAW FIRM
CHARTERED

2156 E. Silver Springs Boulevard
Ocala, Florida 34470-6915

January 9, 2024

Melbourne Police Department
Attn: Records Custodian
900 E. Stawbridge Ave.
Melbourne, FL 32901

SENT VIA EMA
Pd.records@mlbf

Re: My Client: Elizabeth Bradshaw
Date of Incident: November 1, 1990

Attention records custodian:

This is a public records request, pursuant to § 119.07, Fla. Stat.
public records:

1. All records regarding Melbourne Police Department Case N
limited to: incident reports, supplemental reports, evidence, evi
records, memos, employee notes, emails, probable cause affida
communications, and external departmental communications.
this report number was closed due to lack of prosecution by the
therefore, to my knowledge, no public records exception exists
copy of these records;

2. The full and complete employee file of Dennis Nichols inclu
employment, discipline, and counseling; and

3. Provide a list of all computer aided dispatch transaction num
numbers in which Brian Dubey DOB 06/18/1994 is named sin
The list should include the date, call/investigation type, and Mr
reportee, victim, subject, suspect, witness, defendant, etc.).

JARROD G. KING
Jarrod@kinglawfirm.org

ROBERT G. KING
Greg@kinglawfirm.org

(352) 629-8747
www.KingLaw Firm.org

L
.org

, for copies of the following

o.: MP90052779 including but not
dence logs, evidence disposal
vits, inner departmental
The investigation associated with
State Attorney's Office;
precluding the provision of a

ding but not limited to: training,

bers and incident report case
e November 11, 1990 to present.
. Dubey's role (for example,

EXHIBIT
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1

DAMON M. BAXLEY
Damon@kinglawfirm.org

Florida Statute provides that if you claim any record requested is a
records law, you must describe with particularity what the record i
Florida Statute also provides guidance as to the reasonableness of
of the requested records. Kindly provide an itemized invoice prior
records request. We look forward to your statutorily required prom
attempt to fulfill this request.

Very respectfully,

/s/ Damon M. Baxley

DMB/cld

an exception to the public
s and why it is an exception.
fees charged to obtain copies
to the fulfillment of this public
npt response and good faith

2156 E. Silver Springs Boulevard
Ocala, Florida 34470-6915

April 02, 2024

Melbourne Police Department
Attn: Records Custodian
900 E. Stawbridge Ave.
Melbourne, FL 32901

SENT VIA EMAIL
Pd.records@mlbfl.org

Re: My Client: Elizabeth Bradshaw
Date of Incident: November 1, 1990

******SECOND ATTEMPT: COMPLY BY APRIL 17, 2024 TO***

Attention records custodian:

This is a follow-up to our public records request originally s
which you provided no response, in violation of § 119.07(1), Fla. St
attached. Provide copies of the following public records:

1. All records regarding Melbourne Police Department Case No.: M
limited to: incident reports, supplemental reports, evidence, evidenc
records, memos, employee notes, emails, probable cause affidavits,
communications, and external departmental communications. The i
this report number was closed due to lack of prosecution by the Stat
therefore, to my knowledge, no public records exception exists prec
copy of these records;

2. The full and complete employee file of Dennis Nichols including
employment, discipline, and counseling; and

3. Provide a list of all computer aided dispatch transaction numbers
numbers in which Brian Dubey DOB 06/18/1994 is named since No
The list should include the date, call/investigation type, and Mr. Du
reportee, victim, subject, suspect, witness, defendant, etc.).

(352) 629-8747
www.KingLaw Firm.org

*AVOID LITIGATION****

ubmitted January 09, 2024 to
tat.. *See* original request

IP90052779 including but not
e logs, evidence disposal
inner departmental
nvestigation associated with
e Attorney's Office;
luding the provision of a

but not limited to: training,

and incident report case
ovember 11, 1990 to present.
bey's role (for example,

tabbies
EXHIBIT
2

DAMON M. BAXLEY
Damon@kinglawfirm.org

As you are aware, Florida Statute provides that i
exception to the public records law, you must describe
why it is an exception. Florida Statute also provides gui
charged to obtain copies of the requested records. Kindl
fulfillment of this public records request.

As you are also aware, there are penalties for vic
files a court action to enforce the Public Records Act ha
court rules in favor of disclosing the record, the agency
hours, unless the court order specifies a different time f
disclosure of a public record may receive court costs an

Further, a public officer who violates the Public
fine. A public officer who knowingly violates section 1
suspension and removal or impeachment and, in additio
punishable by up to one year in prison, a $1,000.00 fine

You have until April 17, 2024 to respond to o
obtain the records through court action and we will

DMB/cld

if you claim any record requested is an
with particularity what the record is and
dance as to the reasonableness of fees
y provide an itemized invoice prior to the

plating public records laws. A person who
s the right to an immediate hearing. If the
must obey the court order within 48
rame for compliance. The person seeking
d attorney's fees if they prevail.

Records Act can be subject to a $500.00
19.07(1), Florida Statutes, is subject to
n, commits a first-degree misdemeanor
or both.

**ur public records request or we will
seek attorney's fees and costs.**

Very respectfully,

Damon M. Baxley

2156 E Silver Springs Boulevard
Ocala, Florida 34470-6915

April 11, 2024

SENT VIA EM
Pd.records@m

Melbourne Police Department
Attn: Records Custodian
900 E. Stawbridge Ave.
Melbourne, FL 32901

Re: My Client: Elizabeth Bradshaw
Date of Incident: November 1, 1990

Dear assigned records custodian:

Regarding the attached public records request, than
understand the employee file for Detective Nichols will
Division. Unfortunately, the fulfillment of this request lacks

1. No documents were provided indicating an evidence
physical evidence items were returned by FDLE to M
2. No Evidence section disposal orders,
3. No supplemental reports from Detective Nichols,
4. No detective case notes,
5. No internal correspondence,
6. No correspondence regarding a State Attorney filing
of the detective's case file,
7. No evidence disposal Policy & Procedure informatio
8. No Staff Inspections supervisor of the Professional
referenced by Chief of Police Gillespie in a July 202

I find it difficult to believe that there are no emails,
evidence logs (post-FDLE return). I also find it hard to believ
latest July of 2023), the Chief's official audit has not been co
maintained by investigating officers or detectives in their own
request, not just what is in the Records Division's electronic

Please provide the information previously requested a
above. We look forward to the Agency's complete response
advise when we can expect this request to be completely ful

Very re

Damon

DMB/cld

GREG KING
Greg@kinglawfirm.org

JARROD KING
Jarrod@kinglawfirm.org

(3 52) 629 - 8747
www.KingLawFirm.org

MAIL
lbfl.org

k you for the information provided. I be received from the Administrative several pertinent items:

chain of custody or evidence logs after Melbourne PD,

decision which would have been part

on; and
Standards Unit audit of the case (as 3 news article).

written notes, case notes, memos, or re that since October of 2022 (or at the ncluded. As you know, any documents case files are subject to public records file.

nd expressly indicated as missing listed to the public records request. Kindly filled.

spectfully,

Baxley

EXHIBIT
3

DAMON BAXLEY
Damon@kinglawfirm.org

2156 E Silver Springs Boulevard
Ocala, Florida 34470-6915

April 29, 2024

Melbourne Police Department
Attn: Records Custodian
900 E. Stawbridge Ave.
Melbourne, FL 32901

SENT VIA EMAIL
Pd.records@mlbfl.org

Re: My Client: Elizabeth Bradshaw
Date of Incident: November 1, 1990

Attention Records Custodian, Counselor Kellen Simmons, and May

On January 09, 2024, our Firm submitted a written public records re to the above case number and the complete employee file for De response.

On April 02, 2024, our Firm resubmitted the written records requ fulfilled the request; however, copious amounts of documents were PD evidence logs, detective notes, internal/external correspondence Internal Affairs Investigative reports.

On April 11, 2024, our Firm communicated this failure to comple request to the Melbourne Police Department, in writing.

On April 22, 2024, during a teleconference with the City's legal c Simmons assured the public records request to include the Internal would be provided by "the end of the week" (April 26, 2024).

As of April 29, 2024, this public records request fulfillment remains in 03, 2024 to fully satisfy this public records request or we will proc with the assistance of the Courts and seek statutorily awarded attor

CC:
Paul Alfrey, Mayor
Kellen Simmons, Legal Counsel

Very respectfu

Damon Baxley

DMB/cld

GREG KING
Greg@kinglawfirm.org

JARROD KING
Jarrod@kinglawfirm.org

D

(3 52) 629 - 8747
www.KingLawFirm.org

yor Paul Alfrey:

quest for all documents related
nnis Nichols. We received no

est. In response, you partially
withheld to include Melbourne
regarding the investigation, and

tely satisfy this public records

ounsel, Kellen Simmons, Mr.
Affairs Investigative findings

ncomplete. You have until May
eed with obtaining the records
ey's fees and costs.

lly,

EXHIBIT
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DAMON BAXLEY
amon@kinglawfirm.org