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IN THE CIRCUIT COURT OF THE
2ND JUDICIAL CIRCUIT, IN AND
FOR LEON COUNTY, FLORIDA

CASE NO. 93-1701

MICHAEL A. BARFIELD,

Plaintiff,

vs.

FLORIDA DEPARTMENT OF LAW
ENFORCEMENT, et al.,

Defendants.

RECEIVED
MAY 20 1994

OFFICE OF
GENERAL COUNSEL

FINAL ORDER GRANTING PEREMPTORY WRIT OF MANDAMUS

THIS CAUSE came before the Court for hearing on April 13, 1994, on this Court's order granting an alternative writ of mandamus directing Defendants to show cause why the requested records were not produced. After reviewing the Complaint, taking testimony of witnesses, and hearing argument of counsel, the Court makes the following:

Findings of Fact

1. On January 12, 1993, the PBA made a criminal complaint to the FLORIDA DEPARTMENT OF LAW ENFORCEMENT (FDLE). FDLE Special Agent Richard Caplano began a criminal investigation of BARFIELD to determine whether BARFIELD engaged in commercial bribery of a PBA employee who during the course of his calls for solicitation of donations contacted Jack Cole and BARFIELD. With the assistance of PBA employees, FDLE attempted to set up a sting operation to see if BARFIELD would buy sensitive PBA records.

2. During the course of FDLE's investigation, Special Agent Caplano received numerous documents from the PBA. On January 18, 1993, Caplano received a set of PBA records from PBA telemarketing

director Robert Preston. These records were to be used in the sting operation.

3. On January 19, 1993, FDLE began to question continued investigation of BARFIELD. According to Special Agent Caplano, during intercepted telephone calls, BARFIELD expressed concerns about the legality of any transaction to the undercover PBA employee.

4. On January 20, 1993, after consultation with the State Attorney and FDLE legal counsel, FDLE decided to halt its criminal investigation after BARFIELD failed to show up at a meeting with the PBA employee. Caplano contacted BARFIELD and requested to meet with him to discuss the investigation. BARFIELD agreed to meet with Caplano at his attorney's office the following day.

5. On January 21, 1993, Caplano met with BARFIELD and his attorney. During the course of this meeting, BARFIELD made an oral public records request to Caplano to inspect any records Caplano compiled during his investigation. Caplano advised BARFIELD that additional paperwork needed to be completed before the file could be inspected, and that BARFIELD would have to go through Tallahassee to inspect the records.

6. On January 21, 1993, and after his meeting with BARFIELD and BARFIELD's attorney, Caplano retrieved the records he received from Robert Preston on January 18, 1993, from his briefcase and returned them to the PBA. Caplano did not make any copies of these records before they were returned.

7. On January 25, 1993, BARFIELD made a second public records request to Caplano in writing for the records compiled during FDLE's investigation.

8. On February 2, 1993, FDLE produced 31 pages of records to BARFIELD.

9. On February 12, 1993, BARFIELD filed this action claiming FDLE failed to make all its records available. BARFIELD also named the PBA as a party, contending that PBA had custody of the public records returned by Caplano.¹

10. On February 15, 1993, FDLE turned over an additional 36 pages of records to BARFIELD.

11. At the final hearing, the parties stipulated that the records in dispute were as follows:

- a. FDLE Investigative report serial numbers 14 and 15;
- b. five (5) computer diskettes labeled PBA Operations;²
- c. lease for the building used by PBA;
- d. complaints against PBA telemarketers;
- e. 1992 State registration papers and financial reports; and
- f. applications for former employees Sharon Verne and Maurice Vallu.

Findings of Law

12. Section 119.011(1) states that "'[p]ublic records' means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or

¹By separate order, the Court has granted PBA's Motion to Dismiss, finding that the PBA is not a proper party to this action.

²Prior to the Court's ruling, Plaintiff abandoned his request for the five computer diskettes.

ordinance or in connection with the transaction of official business by any agency." (Emphasis added).

13. The Public Records Law (s. 119) has been found by courts to promote a public interest "of the highest order". Byron, Schaffer, Reid & Associates, Inc. v. State ex rel. Schellenberg, 360 So.2d 83 (Fla. 1st DCA 1978), reversed on other grounds, Shevin v. Byron, Schaffer, Reid & Associates, Inc., 379 So.2d 633 (Fla. 1980; town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974); and Board of Public Instruction v. Doran, 224 So.2d 693 (Fla. 1969). Its purpose is to "open government so that citizens can discover what their government is doing". Browning v. Walton, 351 So.2d 380 (Fla. 4th DCA 1977). It has been held that Chapter 119 was "enacted for the public benefit" and as such "should be construed liberally in favor of the public...." Wolfson v. State, 344 So.2d 611, 613 (Fla. 2d DCA 1977); see also Canney v. Board of Public Instruction of Alachua County, 278 So.2d 260 (Fla. 1973); City of Miami Beach v. Berns, 245 So.2d 38 (Fla. 1971); Krause v. Reno, 366 So.2d 1244, 1250 (Fla. 3d DCA 1979). As stated by the First District Court of Appeal in Florida Parole and Probation Commission v. Thomas, 364 So.2d 480, 481 (Fla. 1st DCA 1978), "the spirit, intent and purpose of the statutes requires a liberal judicial construction in favor of the public and a construction which frustrates all evasive devices". "[W]hen in doubt, the courts should find in favor of disclosure rather than secrecy". Bludworth v. Palm Beach Newspapers, Inc., 476 So.2d 775, 780 n.1 (Fla. 4th DCA 1985), review denied 488 So.2d 67 (Fla. 1986).

14. The Court finds that the documents in item 11(a) are public records. These records were never provided to the Plaintiff

until April 11, 1994, when Plaintiff deposed Special Agent Caplano. FDLE claimed no exemption to these records. FDLE acknowledged that other than inadvertence no reason existed for not turning these records over to the Plaintiff. Accordingly, these records should have been released to the Plaintiff at the time he made his public records request.

15. With respect to items 11(c), (d), (e), and (f), the Court also finds these records to be public records. The testimony was undisputed that FDLE Special Agent Richard Caplano received the records in question during the course of his investigation. FDLE's contention that the records belonged to the PBA is irrelevant. The plain language of the statute states that records made or received during the course of transacting official agency business are public records. The PBA voluntarily provided the records to FDLE and no exception is allowed for "bait" material.

16. FDLE argues that Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So.2d 633 (Fla. 1980), requires an intent that records perpetuate, communicate, or formalize knowledge of some type before they can be characterized as public records. FDLE contends that because Caplano never looked at the records beyond identifying what type of records they were, the records did not perpetuate, communicate, or formalize any knowledge.

17. This argument fails for three reasons. First, the records themselves perpetuated, communicated and formalized the knowledge contained within them.

18. Second, under FDLE's rationale, a public employee could receive documents during the course of transacting official business, but as long as the documents were never examined they

would not become public records. The statutory definition of what constitutes public records is broader than this.

19. Finally, a closer examination of the decision in Shevin v. Byron, Harless, et al., reveals that the court's emphasis of "perpetuate, communicate, or formalize knowledge" dealt with precursors of governmental records such as notes, draft materials and dictation. See also State v. Kokal, 562 So.2d 324, 327 (Fla. 1990). The court expressly held that materials that "supply the final evidence of knowledge obtained in connection with the transaction of official business" constitute public records. 379 So.2d at 640.

20. The documents received by Caplano contained and supplied the final evidence of knowledge obtained from the PBA. It matters not whether Caplano examined the documents in full, or even whether he examined them at all. The only prerequisites are that he receive them while transacting official agency business and that they supply the final evidence of the knowledge obtained.

21. FDLE made no copies of the records before returning them to the PBA.

22. FDLE did not act in bad faith in turning over records to the PBA, which have been determined by this Court to be public records.

IT IS THEREFORE ORDERED AND ADJUDGED that the FDLE shall immediately make a demand, pursuant to section 119.06, Florida Statutes, on PBA to return the records so they may be copied. As soon as FDLE receives the requested records, FDLE shall immediately provide copies to the Plaintiff. The Court reserves jurisdiction to award attorneys fees and costs to Plaintiff.

DONE AND ORDERED in Chambers, Tallahassee, Leon County,
Florida, this 19th day of May, 1994.


CIRCUIT JUDGE
L RALPH SMITH, JR.
Circuit Judge

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