

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

WILLIS MORGAN,
Plaintiff,

CASE NO.: 10-23089 (03)

vs.

CHADWICK E. WAGNER,
Chief of Police of the City of
Hollywood, Florida; and
MICHAEL J. SATZ, State
Attorney for the Seventeenth
Judicial Circuit in and for
Broward County, Florida; and
JOSEPH MATTHEWS, custodian
of the public records at issue,
Defendants.

HON. MILY RODRIGUEZ-POWELL

**ORDER ON PLAINTIFF'S COMPLAINT
TO ENFORCE PUBLIC RECORDS LAW**

THIS CAUSE came before the Court on Plaintiff, Willis Morgan's Motion for Accelerated Hearing on his Complaint to Enforce Public Records Law. The Court having reviewed the record herein and the applicable law, having heard argument of counsel, and being otherwise duly advised in premises, finds and decides as follows:

The instant matter arises from a public records request for a document prepared by Defendant Joseph Matthews, a retired Miami Beach detective, with regard to his investigation into the abduction and homicide of Adam Walsh. On April 14, 2010, Willis Morgan made a request for the document under the public records law to the City of Hollywood Police Department, the State Attorney's office and to counsel for Mr. Matthews. Counsel for the City of Hollywood responded to the request by stating that the City did not have a copy of the document but would officially demand that the document be made available. The State Attorney

public records custodian also responded that their office did not have a copy of the document but that they had contacted counsel for Joseph Mathews and made a demand that a copy of the document be made available for inspection. When Mr. Mathews did not produce the request for inspection, Mr. Morgan filed the instant complaint seeking to enforce the public records law (Count I); seeking a declaratory judgment that the defendants have not properly maintained public records as required by law; and an injunction requiring the defendants to maintain the document as required by law. The complaint alleges that the document is a public record under §119.011, Fla. Sta., and is subject to disclosure under §119.07, Fla. Stat. The complaint alleges that Joseph Mathews has not made the document available for inspection and that Mr. Mathews asserted that he destroyed all electronic copies of the document and that the only remaining written copy of the document had been given to his co-author who was presently in Cuba. The complaint further alleges that the failure to maintain the document and to produce the document is a violation of the public records law. The City of Hollywood and the State Attorney's office filed an answer and affirmative defenses to the complaint and Mr. Mathews filed a motion to dismiss and to strike. Plaintiff filed a motion for an expedited hearing in this matter, which this Court held on July 16, 2010.

“The general purpose of the Florida Public Records Act is to open public records so that Florida's citizens can discover the actions of their government.” *City of Riviera Beach v. Barfield*, 642 So.2d 1135, 1136 Fla. 4th DCA 1994) (citations omitted). Section 119.01(1) Florida Statutes, “expressly provides that ‘it is the policy of this state that all state, county, and municipal records shall at all times be open for a person inspection by any person.’” *Barfield*, 642 So.2d at 1136. “Given the underlying policy of openness, the Act is to be construed liberally in favor of openness, and all exemptions from disclosure are to be construed narrowly

and limited to their designated purpose.” *Id.* (citations omitted). When in doubt, courts are obliged to find in favor of disclosure rather than secrecy. *Palm Beach Community College Foundation, Inc. v. WFTV, Inc.*, 611 So.2d 588 (Fla. 4th DCA 1993). Pursuant to §119.07, Fla. Stat., a custodian of a public record “shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable circumstances”

Section 119.011 defines public records as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material . . . made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” The Supreme Court in *Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980) held that the term “record” is “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.” It has been recognized that “certain documents prepared by and solely within the possession of private parties may be public records if they are prepared ‘in connection with the transaction of official business by an agency.’” *Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, 829 So.2d 970, 974 (Fla. 2d DCA 2002). While the mere preparation of documents for submission to a public body does not create public records, the documents can later acquire the character of public records. *Times Publishing Co., Inc. v. City of St. Petersburg*, 558 so.2d 487, 494 (Fla. 2d DCA 1990). In that case, the court held that draft leases and other documents related to negotiations between the City of St. Petersburg and the Chicago White Sox became public records when they were exhibited to the city as part of the bargaining process and revised as a result of the mutual negotiations between the parties. *Id.* The court found that the City and the White Sox violated the public records law in refusing to permit the documents to be inspected by the Times. *Id.* In the case of *NCAA v. Associated Press*, 18 So.3d 1201 (Fla. 1st

DCA 2009), the court found that records created and maintained by the NCAA, while generally not subject to public disclosure, became public records because the documents were examined by lawyers for a public agency, Florida State University, and used in the course of the agency's business. In that case, the NCAA issued a notice to Florida State University that it was going to formally initiate a disciplinary proceeding regarding misconduct that the University had previously documented to the NCAA. The University submitted a response and a hearing was held for the NCAA Committee on Infractions. The NCAA imposed penalties against the University for academic misconduct. The University hired a private law firm to file an appeal. The lawyers and the NCAA made an arrangement by which the lawyer could get images of the transcript of the hearing and other records by way of a secured website. The plaintiffs sought disclosure of the documents in the disciplinary proceeding and appeal and the request was denied resulting in a complaint being filed under the public records law. The court reiterated that under the definition of public records in section 119.011, a document may qualify as a public record under the statutes if it was prepared by a private party, so long as it was "received" by a government agent and used in the transaction of public business. *Id.* at 1207. The court found that the transcript and the response were examined for a legitimate governmental purpose and literally became part of the University's appeal and therefore they were public records. *Id.* at 1208.

In the matter herein, Plaintiff alleges in the complaint that Mr. Matthews presented the document he prepared to the City of Hollywood Police Department and the State Attorney's office, for their review as part of their official investigation, therefore the document became a public record, notwithstanding the fact that Mr. Matthews is a private individual. After hearing

the argument of the parties and reviewing the record and the applicable case law, this Court must disagree with Plaintiff's assertion that the document in question is a public record.

In their answer and affirmative defenses, Chief Wagner of the City of Hollywood Police Department submitted an affidavit in which he states that in January 2008, while serving as the Interim Chief of Police, he contacted John Walsh, the father of Adam Walsh, and advised him of the intention to exceptionally clear the investigation with the conclusion that there was adequate probable cause to arrest Ottis Toole for the abduction and homicide of Adam Walsh if Mr. Toole was alive today. Subsequent to his communication with John Walsh, Chief Wagner was contacted by Mr. Matthews, a retired Miami Beach detective and a friend of John Walsh, in an effort to facilitate a meeting between the John and Reve Walsh in support of the decision to exceptionally close the case. Chief Wagner stated in his affidavit that Mr. Matthews contacted his office on several occasions to schedule an appointment to show him what he described as a soon to be published manuscript of the Adam Walsh investigation and that he had indicated to Mr. Matthews on at least one occasion that he had no interest in reading the manuscript as the decision to exceptionally close the investigation had already been made. Chief Wagner states that shortly before the press conference in December 2008 announcing the decision to exceptionally close the investigation, he finally agreed to meet with Mr. Matthews who gave him a copy of the manuscript and he passed it along to Assistant Police Chief Mark Smith to read and indicate if the manuscript had any value or revelations. The Assistant Police Chief advised that the manuscript was nothing more than a regurgitation of the facts and investigative findings of the members of the Hollywood Police Department. As such, the manuscript was returned to Mr. Matthews. Chief Wagner further states that while at no time during the limited review of the manuscript did he consider it a public record, when the public records request was received, in an

abundance of caution, he requested the Police Department's attorney to officially request the return of the manuscript. In their answer and affirmative defenses, the State Attorney's office asserts that Mr. Matthews authored a document titled "A Cry for Justice" containing his personal investigative theories and conclusions concerning Adam Walsh's death, which was viewed by Chief Assistant State Attorney Chuck Morton and returned to Mr. Matthews. The State Attorney states that the document was not created on behalf of, or at the request of, or for the use of any public agency. The State Attorney asserts that their investigation of Adam Walsh's death was "inactive" prior to the viewing of Mr. Matthews' document and the viewing of the document did not change that status. The State Attorney also stated it made a demand on Mr. Matthews to voluntarily make the document available.

Plaintiff points to a letter to the Miami Herald written by Chief Assistant State Attorney Chuck Morton in which he stated the Hollywood Police Department's investigation contained substantial information that tracked Ottis Toole's whereabouts and opportunity to commit the crime and that this was "neatly and skillfully pointed out in an investigate filed created by retired Detective Joe Mathews and presented for my review . . . [and] which was also presented to the Hollywood Police Department and reviewed by Assistant Police Chief Mark Smith, who worked tirelessly on the Adam Walsh case. Plaintiff argues that this statement, in addition to the admissions of both the City of Hollywood and the State Attorney's office that they demanded Mr. Matthews to make the document available establishes as a matter of law that the document is a public record. However, while the letter to the Miami Herald states that Mr. Matthews' document was reviewed by the State Attorney's office and the City of Hollywood Police Department, this review without more does not transform Mr. Matthew's document into a public record. The decision had already been made by the Hollywood Police Department to

exceptionally close the investigation; therefore the document was clearly not used as a part of their investigation. Similarly, the State Attorney's investigation, which was inactive at the time the document was reviewed, was not reopened as a result of the review of the document. This case is readily distinguishable from *NCAA* and *Times Publishing* in that in those cases the documents were not only received and reviewed by a government agency but they was also utilized by the agency for an official state purpose. Here, there is simply no evidence that the document was used in the transaction of, or in the course of government business. A document is not "received" within the meaning of the public records law merely because it is viewed by an agent of the state. *NCAA*, 18 So.3d at 1208.


In the absence of any evidence to the contrary, this Court finds that the document in question is not a public record as defined in section 119.011, Fla. Stat.

Accordingly, it is hereby

ORDERED AND ADJUDGED that Plaintiff's Complaint to Enforce the Public Records Law is DISMISSED with Prejudice.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this ^{4th} day of August, 2010.

Mily Rodriguez Powell


MILY RODRIGUEZ-POWELL
CIRCUIT COURT JUDGE

AUG - 4 2010

TRUE COPY

Copies to:

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