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July 19, 2010

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Via Hand Delivery

The Honorable Mily Rodriguez-Powell
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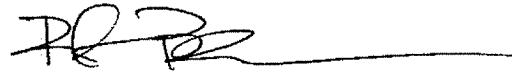
**Re: Willis Morgan v. Chadwick E. Wagner, et al.
Broward County Circuit Court Case No.: 10-23089 (03)**

Dear Judge Rodriguez-Powell:

In connection with the hearing which took place on July 16, 2010 regarding the above-referenced lawsuit, enclosed please find a courtesy copy of Defendant's, Joseph Matthews, Proposed Order Dismissing Plaintiff's Complaint.

Thank you for your consideration of the enclosed.

Respectfully Submitted,



RICHARD A. BEAUCHAMP, ESQ.

RAB/GLM/sg
Enclosures

cc: Thomas J. Julin, Esq., counsel for Plaintiff (via facsimile w/enclosure)
Joel Cantor, Esq., counsel for Chadwick E. Wagner (via facsimile w/enclosure)
Charles Morton, Esq., counsel for Michael J. Satz, Esq. (via facsimile w/enclosure)

f:\client\00184\10-18515\correspondence\7-19-10 letter to judge rodriguez powell with enclosed order.docx

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

CASE NO.: 10-23089 (03)

WILLIS MORGAN,

Plaintiff,

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.

ORDER DISMISSING PLAINTIFF'S COMPLAINT TO ENFORCE PUBLIC RECORDS LAW

THIS CAUSE came before the Court for consideration upon Plaintiff, Willis Morgan's, Motion for Accelerated Hearing to Enforce Public Records Law, and the Court having examined the court file, reviewed the pleadings and motions filed herein, and being otherwise fully advised of the premises thereof, the Court finds that:

1. The issue before this Court is whether a manuscript created by retired Miami Beach detective Joe Matthews qualifies as a public record under Florida law. The manuscript was created by Joe Matthews as part of his private investigation into the 1981 murder Adam Walsh. A copy of the manuscript was provided to Chadwick Wagner, the Chief of Police for the City of Hollywood Police Department, and Chuck Morton, a Chief Assistant State Attorney at the State Attorney's Office. Mr. Matthews' preparation of the manuscript was not done on behalf of, or in connection with, either the Police Department or State Attorney's investigation

into the Adam Walsh murder. Plaintiff has requested access to the manuscript from the State Attorney's Office and the Hollywood Police Department, claiming that it is a public record subject to inspection and disclosure under Florida law.

2. Chapter 119 of the Florida Statutes and Article 1, §24 of the Florida Constitution govern public records requests. The right to inspect the records of state and local government bodies is unquestionably broad. See *NCAA v. Associated Press*, 18 So. 3d 1201, 1206 (Fla. 1st DCA 2009); *Times Publishing Company, Inc., v. City of St. Petersburg*, 558 So. 2d 487, 492 (Fla. 2d DCA 1990) ("the right to access public documents is virtually unfettered, save only the statutory exemptions..."). There is no question that if Mr. Matthews' manuscript is a public record, Plaintiff would be entitled to access to the manuscript pursuant to Chapter 119 and Article 1, §24. However, the case at hand is not a dispute over access, but rather whether Mr. Matthews' manuscript constitutes a public record in the first place.

3. The most recent, and instructive, case on the issue of whether a document constitutes a public record is the First District Court of Appeal's decision in *NCAA v. Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009). In *Associated Press*, the NCAA imposed penalties on Florida State University for academic misconduct. *Id.* at 1205. A hearing was held before the NCAA Committee on Infractions, and penalties were ultimately imposed. *Id.* Florida State filed an appeal, to which the Committee on Infractions issued a response. *Id.* The Associated Press subsequently sought access to the hearing transcript and the Committee on Infractions response to the University's appeal. *Id.* at 1205-06. The parties disputed whether the hearing transcript and the response constituted public records.

4. The First District Court of Appeal ultimately held that the documents in question were public records because they were received by public agents and used in connection with

public business or for an official state purpose. *Id.* at 1207-08. While the Court accepted the NCAA's argument that a state agent merely viewing or examining a document does not transform the document into a public record, the Court found that the hearing transcript became a public record because it was used for an official state purpose when it was incorporated into the University's appeal. *Id.* The Court emphasizes at numerous points throughout the opinion that it was not just the receipt of documents by Florida State University—but their use in connection with official public business—that turned them into public records. See also *Times Publishing Company, Inc., v. City of St. Petersburg*, 558 So. 2d 487, 492 (Fla. 2d DCA 1990).

5. This case presents facts different from those in *Associated Press*. The pleadings and sworn affidavits in this case evidence the fact that Mr. Matthews' manuscript was never used for an official governmental purpose. At the time his manuscript was presented to the Hollywood Police Department and State Attorney's Office, Joe Matthews was not—nor ever had been—an employee of the Police Department or State Attorney's Office, and neither the Police Department or State Attorney's Office had requested a copy of the manuscript from Mr. Matthews. The State Attorney's Answer to Plaintiff's Complaint makes clear that Mr. Matthews' manuscript "was never viewed by any employee of the Office of the State Attorney to be used for any investigative or prosecution function" and that the manuscript had no bearing on the status of the State Attorney's investigation into the murder. [Satz Answer, ¶¶ 30, 56]. Similarly, the Hollywood Police Department made their decision to "exceptionally clear" the Adam Walsh murder in January of 2008, well before the time when Mr. Matthews' provided his manuscript to Chief of Police, Chadwick Wagner. [Wagner Answer, Exhibit A, ¶ 2]. It is further clear from the affidavit of Chief of Police Chadwick Wagner that Mr. Matthews' manuscript was not used in any way in connection with the Police Department's investigation

into the Adam Walsh murder, which is underscored by the fact that the manuscript was promptly returned to Mr. Matthews.

6. Pursuant to the decision in *Associated Press*, the mere receipt or review of a document by a state or local agency does not transform that document into a public record. Rather, the document must be used in connection with public business or for some official state purpose. Here, while Mr. Matthews' manuscript was provided to the State Attorney's Office and Hollywood Police Department, it was never used in either agency's investigation into the Adam Walsh murder, relied upon in any way in either agency's decision-making as to the status of the Adam Walsh murder, or incorporated in into either agency's investigation of the murder. The document was therefore not used in connection with public business or for any state purpose, and does not constitute a public record under Florida Statutes Chapter 119 or Article 1, §24 of the Florida Constitution.

Accordingly, for the aforementioned reasons, it is **ORDERED AND ADJUDGED** as follows:

1. Counts I, II, and III of Plaintiff's Complaint are **DISMISSED WITH PREJUDICE** as to all Defendants, and Plaintiff's request for Attorney's fees is **DENIED**.
2. Defendant, Joseph Matthews', Motion to Dismiss and Motion to Strike is moot and therefore **DENIED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this _____, day of _____, 2010.

MILLY RODRIGUEZ POWELL
Circuit Court Judge

Copies to:

Thomas R. Julin, Esq., Counsel for Plaintiff
Joel Cantor, Esq., Counsel for Defendant Chief of Police
Joel Silvershein, Esq., Counsel for Defendant State Attorney
Thomas Panza, Esq., Counsel for Defendant Joseph Matthews

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Date July 19, 2010	Client/Matter No.: 00184/10-18515
To: Thomas J. Julin, Esq. 305-810-2460 Joel Cantor, Esq. 954-967-4493 Charles B. Morton, Esq. 954-831-8401	From: Richard A. Beauchamp, Esq./Shelly
Fax Number: See above	
Re: Willis Morgan v. Chadwick E. Wagner, et al.	Number of Pages, Including Cover: 7

URGENT REPLY ASAP PLEASE COMMENT PLEASE REVIEW FOR YOUR INFORMATION

COMMENTS/SPECIAL INSTRUCTIONS:

Please see attached correspondence and proposed Order to Judge Mily Rodriguez-Powell. Thank you.

fax cover

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