

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

FLORIDA CENTER FOR GOVERNMENT  
ACCOUNTABILITY, INC.,

Plaintiff,

v.

CASE NO. 2022-CA-1785

EXECUTIVE OFFICE OF THE GOVERNOR, et al.

Defendants.

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**ORDER**

THIS MATTER came before the Court for an accelerated hearing under section 119.11, Florida Statutes. After reviewing the pleadings, submissions of the parties, hearing the argument of counsel, and otherwise being advised in the premises, it is

ORDERED AND ADJUDGED as follows:

1. On October 10, 2022, Plaintiff filed a complaint seeking to enforce the Public Records Act, chapter 119, Florida Statutes, relating to two record requests Plaintiff had sent to the Executive Office of the Governor (EOG) on September 20 and 21. The requests sought various records, including text messages, a text log, and a phone log for a defined period of time relating to the September 14 transport of undocumented aliens to Martha's Vineyard.

2. On October 11, 2022, the Court found that the Complaint stated a prima facie case for relief and issued an Order to Show Cause directing Defendants to file a response within five calendar days. The Order to Show Cause permitted Plaintiff to file a reply within three calendar days after receipt of the response. As required by section 119.11, Florida Statutes, the Court scheduled the accelerated hearing for October 25, 2022. Plaintiff and Defendants both submitted their respective filings in advance of this hearing.

3. Section 119.011(12), Florida Statutes defines the term “public records” to mean:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

4. The reasonableness requirement for the production of public records is set forth in Section 119.07(1), Fla. Stat., and states that “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.” *Id.*

5. In conjunction with its response, EOG submitted a declaration of Christopher DeLorenz, the records custodian for the Office of Open Government within EOG. Plaintiff objected to the declaration on two grounds, arguing that it was inadmissible to prove facts at the accelerated hearing and that it failed to comply with section 92.525(2), Florida Statutes, by stating “upon current information and belief” when no rule or law permitted that qualification. In the event the Court did consider the declaration of Mr. DeLorenz, Plaintiff’s counsel tendered for consideration the affidavit of Michael Barfield, the Director of Public Access for Plaintiff.

6. The Court finds that it need not rule on the admissibility of either the declaration of Mr. DeLorenz or the affidavit of Mr. Barfield because, even if Mr. DeLorenz were present to testify regarding directly what he had said in the declaration itself, the information contained in the affidavit does not show EOG’s compliance with chapter 119 in reasonably responding to Plaintiff’s request for access to public records under the Public Records Act.

7. The EOG acknowledges the decision in *O’Boyle v. Town of Gulf Stream*, 257 So. 3d 1036 (Fla. 4th DCA 2018), which requires an agency to make inquiries of individual

employees who may possess public records on private accounts or devices. The EOG has presented no evidence to the Court of what direct steps it took to identify or produce records responsive to the public records request dated September 20, 2022, some of which have yet to be produced to Plaintiff. The court finds that the EOG is not in compliance with Chapter 119, Florida Statute 119. EOG's partial production and response to the record requests were unreasonable.

8. Specifically, the EOG has not made any production of a text or phone log of James Uthmeier as requested in the records request dated September 20, 2022. Nor has the EOG shown why it has not produced all records responsive to part 4 of the September 20th request.

9. The Court finds that Plaintiff was entitled to file this action within 30 days of making the records request because it would otherwise not availed itself of the protection of section 119.07(1)(h), Florida Statutes, which requires an agency to preserve all records responsive to a records request, even if it contends that certain records are not a public record if an action is filed within a 30-day window of the request being made.


10. The EOG also made redactions to certain records provided to Plaintiff in response to the requests but has not shown any statutory basis for those redactions, nor has it asserted any exemption or provided any basis under the law that justifies the redaction of documents in this case.

11. Under section 119.11(2), Florida Statutes, “[w]hen a court orders an agency to open its records for inspection in accordance with this chapter, the agency shall comply with such order within 48 hours, unless otherwise provided by the court issuing such order.”

12. The Court orders the EOG to produce any remaining records responsive to the outstanding record requests within 20 days from the date of the hearing.

13. The Court grants Plaintiff's request for reasonable attorney's fees and costs. The parties may gather discovery as it relates to fees and costs. Unless resolved by the parties, the Court retains jurisdiction to determine a reasonable amount of attorney's fees and costs incurred to enforce the Public Records Act.

DONE AND ORDERED in Chambers, in Tallahassee, Leon County, Florida this Thursday, October 27, 2022, *nunc pro tunc* October 25, 2022.

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Lee Marsh, Circuit Judge  
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J. LEE MARSH  
Circuit Judge

Copies furnished to:

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