

ROBERT BURNS

NUMBER 717529 DOCKET: 24

19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

COL. LAMAR DAVIS, IN HIS OFFICIAL CAPACITY
AND CUSTODIAN OF RECORDS FOR THE
LOUISIANA STATE POLICE

STATE OF LOUISIANA

**PLAINTIFF'S BRIEF SUPPORTING LETTERS OF COUNSELING / WARNING
ON TROOPER SCOTT LOPEZ BEING MADE PUBLIC**

NOW UNTO COURT comes Petitioner, Robert Edwin Burns, in proper person, who files this Brief as instructed by this Honorable Court on Monday, May 23, 2022. On that date, this Honorable Court ordered Defendant Davis to provide all of the redacted pages of Petitioner's public records request as well as two (2) Letters of Counseling / Warning which were not among the redacted pages provided to Petitioner to this Court for its in-camera inspection. This Honorable Court instructed Petitioner to provide this Brief and outline his rationale for making those two (2) Letters of Counseling / Warning pertaining to Louisiana State Police (LSP) trooper Scott Lopez available to the public.

May It Please The Court:

On March 24, 2022, Legal Counsel for Defendant, Ms. Gail Holland, indicated the following to Petitioner via formal letter:

....Although Trooper Lopez does have two (2) letters of counseling in his file, pursuant to Louisiana State Police Commission Rule 12.9, those letters of counseling are not considered discipline and are not considered "public."

As argued by Petitioner before this Honorable Court on May 23, 2022 (with an emphasis to this Court that Petitioner was not being flippant), LSP has the mentality that the priority of legal bodies in the United States is as follows: At the very top is the Louisiana State Police Commission (LSPC). Reporting directly to the LSPC is the United States Supreme Court (USSC). Beneath the USCC are the various U. S. Courts of Appeal, followed by the Louisiana State Supreme Court, followed by the Louisiana Courts of Appeal, followed by the individual trial courts, and then finally the Louisiana Legislature (though Petitioner realizes that is a separate branch of government).

Petitioner argues, just as he did on May 23, 2022 before this Honorable Court, that the proper way to obtain an exemption to a record otherwise clearly public is to

enact a statute by the Louisiana Legislature. Petitioner stressed that Defendant did not pursue this course of action, the one which would have been appropriate, because of the knowledge that the proposed bill would not pass and become law.

Petitioner asserts that, instead, defendant chose to have it's highest-perceived-level of lawmaking ability, the LSPC (which has no authority to make laws whatsoever), simply issue a rule indicating that Letters of Counseling / Warning are off limits to the public. Contrary to Defendant's line of reasoning, the LSPC has no such authority to restrict access to public documents, and that role is properly relegated to the Louisiana State Legislature, a body which Defendant ignored in obtaining its "justification" for not "considering" the records to be "public."

LSPC Rule 12.9 is replicated below:

"12.9 Letters of Counseling and/or Warning; Responses. (a) (b) A letter of counseling or warning is not a disciplinary action. Such letters may be maintained in a supervisory or investigatory file, however, they shall not be included in any record which is accessible to the public....."

In its Opposition Memorandum argued before this Honorable Court on May 23, 2022, Defendant remained completely silent on Letters of Counseling / Warning notwithstanding Petitioner's extensive focus on such letters in his Petition. Petitioner asserts that silence was intentional because Defendant knows that's the area (i.e. the Letters of Counseling / Warning) at which it is most vulnerable.

The very use of the word "considered" in Ms. Holland's letter to Petitioner is a direct admission that the matter is not a settled fact that the Letters are "not" public record but rather that LSP does not "consider" them public.

Petitioner emphasizes that Ms. Holland's wording by using the word "considered" leaves no margin for interpretation about there being "doubt" as to whether they are public record or not. Clearly there **is** doubt, and use of the word "considered" clearly demonstrates that fact.

Accordingly, Petitioner asserts that Defendant's rationale for denying him access to the Letters of Counseling / Warning falls woefully short of what is required in *Title Research*, which specifically states that public records in Louisiana should always be "construed liberally in favor of free and unrestricted access to the records, and that access

can be denied only when a law, specifically, and unequivocally, provides otherwise..... **Whenever there is doubt as to whether the public has the right of access to certain records, the doubt must be resolved in favor of the public's right to see.**" *Title research Corp. v. Rausch*, 450 So.2nd 933, 936 (La. 1984). [**Bold emphasis is Petitioner's**].

At least one past associations of LSP Trooper Scott Lopez, particularly him reportedly being former Iberia Parish Sheriff Louis Ackal's right-hand man also would buttress the public's right to know and serve to outweigh any "right to privacy" asserted by Lopez. Petitioner includes with this Brief an Associated Press picture and caption beneath the picture appearing on a March 16, 2016 feature of Ackal and Lopez exiting Lafayette Federal Court. That picture and AP caption is attached hereto and made a part hereof as Exhibit P-1. The caption is replicated below:

FILE - In this March 31, 2016, file photo, Iberia Parish Sheriff Louis Ackal, center, leaves the U.S. District Courthouse in Lafayette, La., after being arraigned as part of an ongoing U.S. Justice Department Civil Rights Division investigation of the Iberia Parish Sheriff's Office. A federal jury will decide if Ackal is guilty of ordering the beatings of prisoners in a jail's chapel and orchestrating a cover-up that included burning of files and lying under oath. No matter the verdict, the Justice Department's case against Ackal already has left bruises on the community that first elected him eight years ago. Jury selection begins Monday, Oct. 31. (Duane Fatherree/The Daily Iberian via AP, File)

In the photograph, walking to the immediate right of Ackal is LSP Trooper Scott Lopez, who served directly under Ackal from September 24, 2015 through March 10, 2017 and who has self-admitted to "politicking for Louis Ackal."

News features concerning Ackal during the timeframe leading up to and including his Federal trial are certainly less-than-flattering. For example, here are excerpts from a November 5, 2016 NBC News feature:

"Later, when the sheriff found out [that three off-duty officers had beat up two black men "for fun,"], he [Ackal] said it simply sounded like a case of 'n****r knockin',"

"Another former deputy testified that narcotics agents regularly used excessive force against black residents. Deputy Ben Lassalle said agents would travel to a 'predominantly black part of town' and beat people up 'for pretty much no reason.'"

"Before his trial began, Ackal was secretly recorded making threats against federal prosecutor Mark Blumberg, according to court filings. A transcript of the conversation shows Ackal threatening to shoot the prosecutor, who is special litigation counsel assigned to the Civil Rights Division in Washington, DC."

"He told me ah, you can help the government," Ackal was recorded saying to an unidentified person. "You know about these people, you can give them to us."

"I said, 'The only thing I'm gonna give you, f****ing shoot you right between your g*****n Jewish eyes, look-like-an-opossum bastard,'" Ackal said.

Ackal also called the prosecutor a "sorry son-of-a-b**** Jew bastard in Washington."

Further, LSP has recently sustained charges that LSP Trooper Scott Lopez violated the agency's body-worn camera policy entailing the incident of July 14, 2021 referenced in Paragraph 23 of Petitioner's petition. LSP communicated that fact to the complainant, Billy Broussard, via a letter dated May 25, 2022. That letter is attached hereto and made a part hereof as Exhibit P-2.

Further, LSP has recently sustained charges that LSP Trooper Scott Lopez engaged in Conduct Unbecoming of an LSP Trooper entailing his presentation before the St. Martin Parish Planning and Zoning Commission on January 6, 2022 referenced in Paragraphs 30 – 35 of Petitioner's Petition. LSP Communicated that fact to the complainant, Billy Broussard, via letter dated May 25, 2022. That letter is attached hereto and made a part hereof as Exhibit P-3.

In another troubling development on the part of the LSPC, on the very same day that LSP sent the letters referenced above to complainant Billy Broussard, the LSPC published a circular (# 228) seeking, at its meeting of June 9, 2022, to remove Letters of Reprimand as a disciplinary measure. That circular is attached hereto and made a part hereof as Exhibit P-4. Petitioner asserts that this proposed measure is yet another means for records which would otherwise be assessable to the public via public records requests to be intentionally concealed and withheld from the public through yet another measure by the LSPC rather than obtaining a public records exemption in the correct manner, which would be enacting a statute through the Louisiana Legislature.

Defendant cites a plethora of case law to support the contention that personnel records are essentially off limits, so to speak. The fallacy of that argument is that, as stated in the very rule Defendant cites for denying him access to the Letters, the letters are NOT in Trooper Lopez's personnel file. Specifically, the rule states: "Such letters may be maintained in a supervisory or investigatory file." Hence, these are not documents in Trooper Lopez's personnel file, and that explains why Petitioner was startled in Court on May 23, 2022 when Defense Counsel Gregory C. Farenholt indicated that even he had not been presented with the Letters of Counseling / Warning. Thus, there can be little doubt these files are not part of Trooper Lopez's personnel file and were therefore withheld entirely from the documents (redacted and unredacted) provided to Petitioner.

Nevertheless, this Honorable Court has ordered Defendant to produce the Letters for its in-camera inspection, after which the Court will render a ruling regarding whether the records should be released to the public or not.

Petitioner asserts that the public's right to know (as supported by *Title Research*) vastly exceeds Trooper Lopez's "right to privacy," and further asserts that is particularly the case given recent events in Trooper Lopez's career (i.e. being cited by LSP for failing to turn on his body-worn camera in a June 14, 2021 incident and being cited for Conduct Unbecoming for his remarks to the St. Martin Parish Planning and Zoning Commission on January 6, 2022).

Therefore, Petitioner respectfully requests that this Honorable Court examine in-camera the Letters of Counseling / Warning which Defendant has been ordered to provide to this Honorable Court, and thereafter issue an Order granting the release of those Letters to the public. Petitioner will graciously appreciate any other pages of the large volume of redacted pages which Defendant will be submitting to this Honorable Court for in-camera inspection to be made public, but it is the Letters of Counseling / Warning that, as stated in his May 23, 2022 oral arguments before this Honorable Court, which he most desires.

Respectfully Submitted,

Robert Edwin Burns, in proper person
Founder and author, *Sound Off Louisiana*
4155 Essen Lane, Apt. 284
Baton Rouge, LA 70809-2155
(225) 235-4346
E-mail: Robert@SoundOffLA.com



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing instrument has this day been served on all parties through their counsel of record in this proceeding by:

- Hand Delivery Prepaid U.S. Mail Email
 Facsimile Overnight Mail Service

Baton Rouge, Louisiana, this 3rd day of June, 2022.

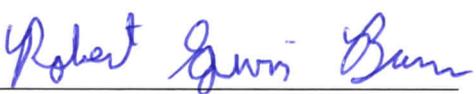

ROBERT EDWIN BURNS, in proper person.

Exhibit P-1



FILE - In this March 31, 2016, file photo, Iberia Parish Sheriff Louis Ackal, center, leaves the U.S. District Courthouse in Lafayette, La., after being arraigned as part of an ongoing U.S. Justice Department Civil Rights Division investigation of the Iberia Parish Sheriff's Office. A federal jury will decide if Ackal is guilty of ordering the beatings of prisoners in a jail's chapel and orchestrating a cover-up that included burning of files and lying under oath. No matter the verdict, the Justice Department's case against Ackal already has left bruises on the community that first elected him eight years ago. Jury selection begins Monday, Oct. 31. (Duane Fatherree/The Daily Iberian via AP, File)

The individual to Ackal's right is his reported right-hand-man, Sheriff Deputy Scott Lopez, who served in Ackal's Office from September 24, 2015 through March 10, 2017.



JOHN BEL EDWARDS
GOVERNOR

Lamar A. Davis, COLONEL
DEPUTY SECRETARY

State of Louisiana
Department of Public Safety and Corrections
Public Safety Services

May 25, 2022

Billy Broussard
1307 South Main
Breux Bridge, Louisiana 70517

Dear Mr. Broussard,

A thorough investigation (N21-078) was conducted as a result of your complaint regarding the incident which occurred on June 14, 2021.

It was determined that your allegation of *Courtesy* against TFC Lopez is **Not Sustained**. This disposition is defined as: there is insufficient evidence to prove or disprove the allegation.

It was determined that your allegation of *Conduct Unbecoming an Officer* against TFC Lopez is **Unfounded**. This disposition is defined as: the allegation is false, not factual.

It was determined that your allegation of *Badge of Office* against TFC Lopez is **Unfounded**. This disposition is defined as: the allegation is false, not factual.

It was determined that your allegation of *Body Worn Camera* against TFC Lopez is **Sustained**. This disposition is defined as: the allegation is supported by sufficient evidence.

Sincerely,

Captain Saleem El-Amin
Commander, Internal Affairs
Louisiana State Police

Exhibit P-2



JOHN BEL EDWARDS
GOVERNOR

Lamar A. Davis, COLONEL
DEPUTY SECRETARY

State of Louisiana
Department of Public Safety and Corrections
Public Safety Services

May 25, 2022

Billy Broussard
1307 South Main
Breaux Bridge, Louisiana 70517

Dear Mr. Broussard,

A thorough investigation (IA 22-00011) was conducted as a result of your complaint regarding the incident which occurred on January 6, 2022.

It was determined that your allegation of *Conduct Unbecoming an Officer* against TFC Lopez is **Sustained**. This disposition is defined as: the allegation is supported by sufficient evidence.

Sincerely,


Captain Saleem El-Amin
Commander, Internal Affairs
Louisiana State Police

Exhibit P-3



State Police Commission

Post Office Box 66555
Baton Rouge, LA. 70896-6555
Phone (225) 925-7057
Fax (225) 925-7058
www.laspc.com

John Bel Edwards
Governor

Jason Hannaman
Executive Director

General Circular No. 228

Date: May 25, 2022

Subject: Proposed Amendments to Chapters 1, 2, 7, 9, 12, 14, and 15 of the State Police Commission Rules.

Pursuant to the provisions of State Police Commission Rule 2.10(a), the State Police Commission will hold a public hearing on June 9, 2022, to consider proposed amendments to Chapters 1, 2, 7, 9, 12, 14, and 15 of the State Police Commission Rules. The hearing will begin at 9:00 A.M. in the Veterans' Memorial Auditorium, 5825 Florida Blvd., Baton Rouge, LA, 70806.

Summary of Proposal - SPC Chapter 1

Please refer to the charts that follow for a comparison between the current and proposed rule language. Proposed additions appear in **blue** and omissions appear in **red**.

The proposed revision of the definition in Chapter 1 correlates with proposed changes to State Police Commission rules in Chapter 12.

Current Rule	Proposed Rule
CHAPTER 1	
DEFINITIONS: Disciplinary Actions - include only the following: dismissals, suspensions without pay, reductions in pay, involuntary demotions and written reprimands.	DEFINITIONS: Disciplinary Actions - include only the following: dismissals, suspensions without pay, reductions in pay, and involuntary demotions and written reprimands .

Exhibit P-4