

19TH JUDICIAL DISTRICT COURT PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. 717529

SECTION 24

ROBERT BURNS

VERSUS

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

FILED: _____

DEPUTY CLERK

SUPPLEMENTAL MEMORANDUM REGARDING JUNE 20, 2022 HEARING

MAY IT PLEASE THE COURT:

Defendant, Col. Lamar Davis, in his official capacity and as custodian of records for the Louisiana State Police (“LSP”), submits this supplement to his prior memorandum filed in this matter on June 10, 2022.

Following the submission of the first memorandum and a motion to file documents under seal, undersigned counsel’s assistant received an electronic mail message from plaintiff, who advised (after referring to undersigned counsel as, among other things, “a total patsy lacking the ability to pay attention to detail”) that the two letters he was attempting to obtain were not, in fact, the recently issued letters of reprimand and counseling issued to Trooper Lopez in 2022. A copy of the e-mail received from the plaintiff is attached as Exhibit “A.”

In response to the e-mail received from the plaintiff, undersigned counsel again requested additional documents from LSP. Two additional documents have been provided, and those documents will likewise be submitted to the court under seal.

The first document is a June 29, 2010, report of an administrative investigation of a complaint received against Trooper Lopez, along with a signed decision by the Superintendent of LSP ordering that Trooper Lopez be provided “verbal counseling.” This document, like the letter of counseling referred to in the prior memorandum submitted by Col. Davis, is not a “disciplinary action” and was not maintained in Trooper Lopez’s public personnel file for the reasons previously submitted to the court. It was therefore not a part of the personnel file produced in response to the plaintiff’s public records request.

The second document is an August 21, 2018, Letter of Counseling issued to Trooper Lopez following a minor accident which caused damage to Trooper Lopez’s fleet vehicle. Like

the Letter of Counseling issued to Trooper Lopez in 2022, the document notes that “this letter is not a disciplinary action. This letter will be maintained in your supervisory file and other files, but this letter will not be accessible to the public unless and until it is used to support future discipline.”

Again, for the reasons explained in the prior memorandum submitted to the Court, this document was not included in the personnel file produced to the plaintiff because it was not a “disciplinary action” which LSP maintains in a trooper’s personnel file.

Col. Davis again prays that the Petition for Mandamus be denied and that Burns’ request for costs associated with the filing of the Petition for Mandamus be denied. Plaintiff’s Petition merely prayed for an order requesting the Court to conduct an in camera review of the redacted personnel documents which were provided to plaintiff in response to his January 7, 2022. See Petition, at page 14 of 14. To the extent that plaintiff is now claiming entitlement to documents maintained outside of Trooper Lopez’s personnel file which were never produced or redacted because they are not part of any personnel file, plaintiff is not entitled to any relief from the Court.

Respectfully submitted,

BURGLASS AND TANKERSLEY, LLC



Dennis J. Phayer (10408)

dphayer@burglass.com

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5213 Airline Drive

Metairie, LA 70001

Tel: (504) 836-0408

Fax: (504) 287-0452

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing pleadings on all parties to these proceedings by email, facsimile transmission and/or United States Mail, postage prepaid, this 16th day of June, 2022.



GREGORY C. FAHRENHOLT

19TH JUDICIAL DISTRICT COURT PARISH OF EAST BATON ROUGE

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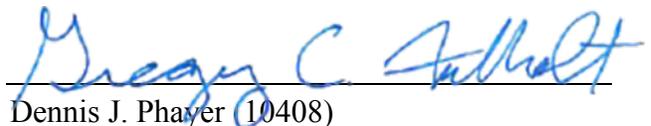
**EX PARTE MOTION FOR LEAVE TO FILE
ADDITIONAL DOCUMENTS UNDER SEAL**

NOW INTO COURT, through undersigned counsel, comes Defendant, Col. Lamar Davis, in his official capacity and as custodian of records for the Louisiana State Police (“LSP”), who respectfully requests an order from the Court allowing him leave to file the following additional documents under seal in accordance with the Court’s verbal instructions in open court at a recent hearing in this matter on May 23, 2022:

1. A 2010 Decision of Appointing Authority ordering that Trooper Scott Lopez be given “verbal counseling” and associated letter;
2. A Letter of Counseling dated August 21, 2018.

Respectfully submitted,

BURGLASS AND TANKERSLEY, LLC



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DEPUTY CLERK

ORDER

Considering the foregoing Ex Parte Motion for Leave to File Documents Under Seal;

IT IS ORDERED that the Clerk of Court shall file the documents referenced in the motion and attached to the motion under seal.

Baton Rouge, Louisiana, this ____ day of June, 2022.

JUDGE DONALD R. JOHNSON

From: Robert@SoundOffLA.com
Sent: Wednesday, June 15, 2022 4:54 PM
To: 'Gregory C. Fahrenholt'
Subject: RE: Robert Burns v. \par Col. Lamar Davis, in his Official Capacity and Custodian of Records for the Louisiana State Police

Well, not to be rude either (and I'll be more than happy to limit discussions of the merits of the lawsuit between us), but either Ms. Holland's letter of March 24, 2022 is completely inaccurate (which would be unfortunate because it's the whole basis upon which I filed the litigation in the first place), or there ARE two other Letters of Counseling which predate March 24, 2022.

Obviously, if LSP acknowledges the existence of two other Letters of Counseling which predate March 24, 2022, I'm trusting that you will amend and/or supplement the Motion for Leave to File Documents Under Seal. Otherwise, if that acknowledgment transpires and there is no amendment or supplement, common sense dictates that I'll file a Motion to Hold Col. Davis in His Capacity in Contempt for failing to adhere to Judge Johnson's Order. Having said that, I'm sure that won't become necessary.

Regards right back,

Robert

From: Gregory C. Fahrenholt <gfahrenholt@burglass.com>
Sent: Wednesday, June 15, 2022 4:30 PM
To: Robert@SoundOffLA.com
Subject: RE: Robert Burns v. \par Col. Lamar Davis, in his Official Capacity and Custodian of Records for the Louisiana State Police

Mr. Burns,

I do not wish to be rude, but moving forward please make sure to contact me directly and not our paralegal with any substantive communications about the facts or merits of your lawsuit. Thank you.

I am seeking clarification from LSP on whether there are in fact two other letters of counseling for Trooper Lopez which pre-dated March 24, 2022. If there are, I will let you know prior to the hearing and submit those to the judge as well for his in camera review.

Regards,
Greg

Gregory C. Fahrenholt | Attorney
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From: Robert@SoundOffLA.com <Robert@SoundOffLA.com>

Sent: Wednesday, June 15, 2022 2:20 PM

To: Tracie Taylor <ttaylor@burglass.com>

Cc: Gregory C. Fahrenholt <gfahrenholt@burglass.com>

Subject: RE: Robert Burns v. \par Col. Lamar Davis, in his Official Capacity and Custodian of Records for the Louisiana State Police

Ms. Taylor:

First, thank you for the Motion, which I have attached back on this email for convenience. I have also attached Ms. Holland's letter of March 24, 2022. As I stated on the voice mail I just left to you, I am very pleased with items 1 & 2 of the motion; however, I have considerable heartburn and in fact am downright displeased with items 3 & 4. Let me elaborate:

As I said in my voice message, Letters of Counseling and Letters of Reprimand are **two separate and distinct items!!!!!!!** They are NOT interchangeable. One, Letters of Counseling, and NOT "considered" discipline and therefore are not subject to public records release. I want to make triple-dog sure that point is driven home in the strongest terms I can muster because I really thought I made that point crystal clear at the last court hearing, but apparently it failed to sink in, or else I have to assume that you folk believe I'm this ignorant fool who fell off the turnip truck when the reality is that, as I stated to you in my voice message, I was the LSU Medal Recipient in my graduating class at LSU in December of 1985 in maintaining a 4.000 GPA throughout my college career. I'm also an inactive CPA having passed that examination on my first attempt (which only 3% of candidates do) with scores among the highest in the nation in Practice (92) and Theory (90). Also, as I said in my voicemail to you, I served as a fraud examiner for the FDIC. Being blunt, we would never have been allowed to return to our field office after having paid so little attention to detail as I believe your firm has apparently done in this matter.

I will concede that I have a built-in advantage of LSP knowledge by virtual of my extensive coverage of the agency over the last 5 ½ years to include attending and videotaping virtually every LSPC meeting.

Now that I've gotten some steam blowing off my chest (which I would much rather do with us privately than in an open court forum), let me address items three and four with you individually:

Item three:

3. A Letter of Reprimand dated February 24, 2022

I can't begin to express how mind-numbingly frustrating it is for you to reference a "Letter of Reprimand" after everything I said in the courtroom at our last hearing. That document is NOT (repeat NOT) what I am seeking, and I could care less for Judge Johnson to view it because, as I explained in my brief, we already know when that discipline

was sustained by newly-installed IA Captain Saleem El-Amin (see the top of page four of my brief and also exhibit P-2 and the date is May 25, 2022). I am not now, nor have I ever, sought a Letter of Reprimand!! I have yet to publish the blockbuster feature on Lopez and, when that time comes, I can certainly request that record. Even though I am not worthy of the 72 public records request I've been attributed by your firm (the actual number is 17) over the last two years, I know wherein the discrepancy lies, and that discrepancy goes hand-in-hand with the type of deception LSP is attempting to pull off in this matter and you're either a total patsy lacking the ability to pay attention to detail and thereby enabling to pull this off, or else you outright assisting them. I sure hope it's not the latter, and, for the record, I do not believe it is. Either way, however, item # 3 isn't remotely close to what I asked for, nor is anything that beings with the words "Letter of Reprimand." I want to ONCE AGAIN STRESS STRONGLY: **LETTERS OF REPRIMAND AND LETTERS OF COUNSELING ARE NOT, REPEAT NOT, INTERCHANGEABLE TERMS!!**

4. A Letter of Counseling **dated April 12, 2022.**

Do you see that little highlight of "dated April 12, 2022?" That is EXACTLY the type of detail that the FDIC drilled into our heads that you do NOT let pass by you if you want to be an effective bank fraud examiner. **The date of Ms. Holland's letter is March 24, 2022.** I firmly believe that, if you check any calendar, April 12, 2022 comes AFTER March 24, 2022. Therefore, this Letter of Counseling CANNOT be one of the two (2) Letters of Counseling that I have been seeking since the outset of filing my lawsuit!!

Let me further say that, again, if you read my brief as I certainly read your Opposition Memorandum, you should certainly know it's not applicable and also stale information. Let me replicate an excerpt from your Opposition Memorandum:

"On April 12, 2022, LSP Troop I Captain Beau Comeaux issued a "Letter of Counseling" to Trooper Lopez related to comments that the trooper made at a St. Martin Parish Planning and Zoning Committee Meeting which were unrelated to his duties as a Louisiana State Police Trooper. As noted in the letter, Captain Comeaux advised Trooper Lopez that "this letter of counseling is not a disciplinary action. This letter will be maintained in your supervisory file and other files, but this letter will not be accessible to the public...."

You are using OUTDATED information!!!! Furthermore, if you'd merely read my brief, you'd know that newly-installed IA Captain Saleem El-Amin overruled Captain Comeaux on that matter (which represented paragraphs 40-46 of my original petition) and upgraded Captain Comeaux's decision from a Letter of Counseling to Sustaining Billy Broussard (the complainant)'s internal affairs complaint against Trooper Lopez, which was Conduct Unbecoming a Louisiana State Trooper!!! It's not as if you had to research this matter! You only had to read my brief for God's sake! See the second paragraph of page four (4) of my brief and also Exhibit P-3 of that same brief.

Now I'm going to highlight the relevant paragraph of Ms. Holland's letter above that FIRMLY demonstrates that LSP has failed miserably to provide the two Letters of Counseling which I sought. Here is her exact wording (made on **March 24, 2022, well before April 12, 2022**).

Furthermore, 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."

So, I hope we can all agree that Trooper Lopez has TWO Letters of Counseling that arose BEFORE March 24, 2022, and that LSP has not yet provided your firm with either one of those two letters. Now it's not up to me to provide there motivation as to why, but in the 5 ½ years of following LSP operations, I know why. It's that the letters of Counseling were issued when much more serious disciplinary measures should have been taken (remember the "Letter of Counseling" is not discipline thus making them off limits to the

public). You already have the proof that's a practice with LSP in Captain Saleem El-Amin having to disregard Captain Comeaux's recent Letter of Counseling (the one you reference in your Opposition Memorandum) in favor of the far, far more serious disciplinary measure of citing Trooper Lopez for Conduct Unbecoming a Louisiana State Trooper for his commentary on January 6, 2022 before the St. Martin Parish Counsel Planning and Zoning Commission.

Now, I truly hope we can get this matter resolved prior to Monday because I really don't want to make harsh statements in Court, but I am nothing short of dumbfounded both by the Opposition Memorandum and the ex Parte Motion for Leave to file documents under seal, particularly when your firm either knows, or certainly ought to know, if you're paying the slightest attention to detain, that those documents are NOT what I'm seeking. It's my sincere hope that you will also forward this email to LSP's legal counsel and other top brass!!

See you on Monday!

Sincerely,

Robert Edwin Burns, founder and author
SOUND OFF LOUISIANA
(225) 235-4346
Robert@SoundOffLA.com

From: Tracie Taylor <ttaylor@burglass.com>
Sent: Wednesday, June 15, 2022 12:19 PM
To: robert@soundoffla.com
Cc: Gregory C. Fahrenholt <gfahrenholt@burglass.com>
Subject: Robert Burns v. \par Col. Lamar Davis, in his Official Capacity and Custodian of Records for the Louisiana State Police

Mr. Burns,

Please find attached the Ex Parte Motion for Leave to File Documents Under Seal which are being filed with the Clerk of Court in the above referenced matter. If you have any questions, please do not hesitate to contact me.

Sincerely,



Tracie J. Taylor
Paralegal to Scott O. Gaspard

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