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24

ROBERT BURNS

NUMBER _____ DOCKET:

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

PETITION FOR WRIT OF MANDAMUS

NOW UNTO COURT comes Petitioner, Robert Edwin Burns, in proper person, who files this Petition for Writ of Mandamus, and who, with respect to same, does hereby allege, espouse, attest, and state as follows, to wit:

1.

That he is a person of the full age of majority and resides in the Parish of East Baton Rouge, State of Louisiana, and is the founder and sole author of articles published on *Sound Off Louisiana*, a video blog formed in June of 2015.

2.

Made Defendant/respondent herein is Col. Lamar A. Davis, in his capacity as Superintendent and Custodian of Records for the Louisiana State Police, State of Louisiana, enjoying the right to sue and be sued in this Court.

3.

Petitioner's blog has focused on the operations and potential improprieties of Louisiana state governmental agencies, and his blog began a heavy focus on Louisiana State Police (LSP) in January of 2017.

4.

On September 10, 2020, Petitioner was first to break the story of the LSP in-custody death of Ronald Greene. That feature is accessible at www.SoundOffLA.com/Greene. The feature was soon reported upon by major news outlets at the local, state, national, and international levels.

5.

On March 11, 2021, Petitioner was first to reveal the language in the form of texts uttered by multiple LSP troopers in the arrest and apprehension of Antonio Harris. That feature is accessible at www.SoundOffLA.com/Harris. That feature too was soon

replicated by media outlets at the local, state, national, and international levels. The content of those texts follows:

Jacob Brown "How was his attitude at the jail?"

George Harper "Complete silence"

Jacob Brown "Lmao"

Dakota DeMoss "lol he was still digesting that ass whoop in"

Jacob Brown "its gonna take him a couple days ... "

Jacob Brown "he gonna be sore tomorrow for sure"

Jacob Brown "BET he wont run from a full grown bear again"

Dakota DeMoss "Bet he don't even cross into LA anymore"

George Harper "GRIZZLY Nah he gonna spread the word that's for damn sure"

Jacob Brown "lmao"

Dakota DeMoss "he's gonna have nightmares for a long time"

Jacob Brown "lmao.....warms my heart knowing we could educate that young man"

Dakota DeMoss "lolol"

Larry Shappley "haha"

6.

Petitioner has to rely extensively upon obtaining public records from LSP in order to authenticate and reveal to the public accusations he is informed on entailing LSP operations.

7.

Prior to the publication of the in-custody death of Ronald Greene, LSP was reasonably cooperative regarding releasing public records to Petitioner. Subsequent to Petitioner's publication of the in-custody death of Ronald Greene, Petitioner has observed

obtaining public records from LSP to be considerably more difficult with him often encountering stiff resistance even when such resistance should not be present.

8.

As an example of LSP resistance to releasing public records, Petitioner began receiving numerous reports of alleged improprieties and alleged violations of LSP policy regarding the operations in the Air Support Unit of LSP.

9.

One of the allegations referenced in paragraph eight (8) for which Petitioner received numerous complaints entailed the apparent LSP hiring of the first-ever civilian pilot to LSP's Air Support operations. Those making the complaints to Petitioner indicated that proposed hiring constituted a direct violation of LSP Policy.

10.

The complaints of the LSP troopers, if confirmed, seemed to have validity as Petitioner videotaped then-LSP Commander of Crisis Response, Mark Morrison, indicating to the Louisiana State Police Commission (LSPC) that, in order to be hired as a pilot one must, "first and foremost, be an LSP trooper." Petitioner filmed Morrison's statement on November 8, 2018.

11.

On December 28, 2020 Petitioner made public records request for the mere posting of the pilot position. Faye Morrison, LSP's then-legal counsel, and the wife of Mark Morrison (and who was in the background as Petitioner filmed Mark Morrison's statements to the LSPC) responded as follows:

Mr. Burns: please be advised that in response to items 3 and 4 of the request below, the documentation responsive to those requests is still in use and not yet public. As such, those requests are denied at this time. Fdm

12.

The utter absurdity of stating that even a job posting for a pilot position was "not yet public" indicated to Petitioner that obtaining LSP public records going forward would be an uphill climb. Petitioner did ultimately obtain records on the hiring of the civilian

pilot, but only months after he'd been hired and those who complained reiterated that such hiring was a direct violation of LSP's hiring policy entailing pilots.

13.

Petitioner's concerns about LSP resistance on public records became more intense when, acting on tips received from yet more LSP troopers, he requested the disciplinary file of recently-promoted Lt. Col. Chris Eskew on April 20, 2021.

14.

Petitioner was informed that Eskew had just been promoted from Captain to Lt. Col. notwithstanding their contentions that he had been disciplined years earlier for alleged theft of cable and/or satellite television services.

15.

Those same troopers had previously indicated to Petitioner that Lt. Col. and LSP Chief of Staff, Doug Cain, also was a participant in the cable and/or satellite television "theft ring," but that Cain had been "guided" to take a hiatus from LSP until the disciplinary matters entailing the alleged theft had been completed.

16.

Petitioner reported upon the concerns of those troopers entailing Lt. Col. Cain and the feature (available at www.SoundOffLA.com/Cain) was published on December 28, 2020 and did demonstrate that Cain took a conveniently-timed hiatus from LSP that lasted from October 29, 2020 until April 16, 2001. Importantly, Lt. John Cannon received an 80-hour suspension as discipline for the theft of cable and/or satellite television services right in the middle of Cain's leave of absence (on January 25, 2001). Cain, who'd gotten word of Petitioner's inquiries about his hiatus, stated that it would be his "preference" for no story to be published, but if Petitioner did so, Cain asked that he be quoted as emphatically denying the troopers' allegations. Petitioner honored Cain's request in the feature. It should be pointed out that the troopers continued to assert that Cain was not being honest; furthermore, WBRZ Investigative Reporter Chris Nakamoto would air a feature on March 22, 2022 indicating that Cain, "lied under oath," when he denied having asked Nakamoto not to air a feature on the late-trooper August McKay and his recorded message on a colleague's voice mail referencing that trooper as a "f@@@### n@@@###."

17.

Petitioner's sources indicated that Cain and Eskew are "close friends," and that Cain was rewarding his close friend with the promotion to Lt. Col. not only despite Eskew's participation in the cable/satellite television theft but also because he had empathy that Eskew faced discipline while Cain had deployed a "slick move" to avoid a similar fate.

18.

When Petitioner requested the disciplinary file of Lt. Col. Eskew on April 20, 2021 (days after Eskew's promotion to Lt. Col.), then-legal counsel Faye Morrison responded two days later, on April 22, 2021 via email with the following statement:

Mr. Burns: with regard to your above referenced public records request, please be advised that our search identified two responsive documents. The two incidents subject of the documents occurred over twenty years ago and there has been no discipline since. Under these circumstances, Louisiana State Police considers LTC Eskew's privacy interest in those documents outweighs the public's interest in them. Louisiana State Police's determinations are supported by Article 1, Section 5 of the Louisiana State Constitution and *City of Baton Rouge, Parish of East Baton Rouge v. Capital City Press*, 4 So. 3d 807 (La. App. 1 Cir. 10/10/2008). With best regards, I am, fdm

19.

Petitioner ultimately obtained Eskew's disciplinary file, but only after threat of litigation because of his belief that the public's right to know outweighed Eskew's "privacy interest."

20.

The belated response to Petitioner's public records request indicated that, on January 19, 2001 (again in the middle of Lt. Col. Cain's hiatus from LSP), Eskew was in fact suspended for forty-four (44) hours for paying \$50 to obtain a device to illegally obtain cable/satellite programming for which payments should have been made to the cable/satellite service company in order to legally receive the programming. In essence, he stole the services.

21.

Eskew had to supply the device to another trooper who "on three or four occasions" would reprogram the device because of "spikes" the cablevision/satellite service provider sent out to render devices such as Eskew's useless.

22.

Petitioner provides the above examples merely to demonstrate the degree to which LSP bucks his efforts at obtaining public records even when such efforts seemingly can't be justified by any assertion that the trooper's "privacy right" exceeds the public's right to know.

23.

On June 14, 2021, LSP trooper Scott Lopez pulled over the driver of a truck on Duchamp Road who was in no apparent violation of any laws and allegedly stated to him, "You better not go down my road again if you know what's good for you."

24.

On September 10, 2021 in a press conference which Petitioner videotaped, LSP Col. Lamar Davis encouraged filing a complaint with LSP Internal Affairs if a trooper, "isn't acting quite right." Accordingly, on November 21, 2021, Billy Broussard, who owned the vehicle which the driver was operating and watched Col. Davis' admonition about filing a complaint, filed a complaint with LSP's Internal Affairs Division. Petitioner posted a feature entailing Broussard's complaint and his narrative discussion of it. That feature is accessible at www.SoundOffLA.com/Lopezcl.

25.

Petitioner made public records request for Trooper Lopez's body camera footage of the incident of June 14, 2021.

26.

Petitioner was informed that, in direct violation of LSP's body-worn camera policy, Trooper Lopez did not activate his body camera for what may have likely been an illegal pullover for a non-law-enforcement purpose.

27.

Petitioner also requested dashcam video, and dashcam video was provided to Petitioner by LSP; however, that dashcam video was devoid of any audio.

28.

Petitioner also requested audio files of all incoming and outgoing calls from LSP Troop I for the period from 2 p.m. to 5 p.m. on Monday, June 14, 2021.

29.

LSP responded to Petitioner's request for the audio files referenced in Paragraph 28 by stating that LSP was deploying a "temporary phone system" on that date and that any such audio files were lost forever.

30.

On January 6, 2022 Trooper Lopez attended the St. Martin Parish Planning and Zoning meeting.

31.

A proposal for the rezoning of a 33-acre tract of land owned by Broussard was the sole item on that January 6, 2022 meeting.

32.

Petitioner filmed the entirety of that meeting.

33.

Trooper Lopez essentially took over total and complete control of the meeting. He, rather than the individual ostensibly chairing the meeting, would call up individuals to make public statements to the Commission (including his own son), and that included calling upon one lady who readily said that she did not want to make public comment, but Trooper Lopez insisted that she do so anyway. He said that it was a "curveball," but he wanted her to make public comment to the Commission.

34.

At that Commission meeting of January 6, 2022, Trooper Lopez repeatedly stated that Broussard had "acted illegally" and "committed illegal acts" entailing his property.

35.

As a result of Trooper Lopez's actions of January 6, 2022, Broussard filed a second LSP complaint against Trooper Lopez on January 24, 2022. Details of that complaint, including video coverage of the entirety of Trooper Lopez's performance before the St. Martin Planning and Zoning Commission is assessable at www.SoundOffLA.com/Lopez.

36.

As a result of Trooper Lopez's actions of January 6, 2022, Petitioner made public records request for the personnel file of Trooper Lopez on January 7, 2022.

37.

After an extended period of prodding on the part of Petitioner and an ignored request for an update on the status of his public records request of January 7, 2022, Petitioner finally got a response indicating that the documents were being redacted. Petitioner finally obtained the requested file via email on March 8, 2022.

38.

A cover letter was provided to Petitioner signed by LSP's new general counsel (who replaced Faye Morrison), Gail Holland, dated March 8, 2022.

39.

The file contained 276 pages, of which 173 pages were fully-redacted.

40.

Believing that the redacting was excessive, Petitioner sent LSP Capt. Nick Manale an email dated March 17, 2022 seeking to obtain Trooper Lopez's "disciplinary file only."

41.

Capt. Manale responded to Petitioner's request for Trooper Lopez's "disciplinary file only," with the following words in a brief email to Petitioner:

Trooper Lopez does not have any sustained discipline in this file. There is an ongoing administrative investigation.

42.

At a meeting of the House Oversight Committee on the In-Custody Death of Ronald Greene which was conducted on March 22, 2022, Lt. Col. Doug Cain was asked by Committee Chairman Tanner Magee regarding the potential that Lt. John Clary may have intentionally withheld his body-worn camera video from LSP Internal Affairs investigators who were investigating the circumstances of Ronald Greene's death.

43.

Lt. Col. Cain responded that LSP could not "sustain" Clary's alleged act, to which Chairman Magee inquired, "What does that mean, not sustained?"

44.

Lt. Col. Cain responded that the investigation of any such matter, "Could not be proven nor disproven."

45.

Col. Davis followed up on Lt. Col. Cain's explanation of investigations that did not result in "sustained" disciplinary actions by stating that documentation pertaining to such situations, "are not considered public record."

46.

Petitioner contends that the public certainly has a right to know the fact that Lt. Clary **may** have violated policy and any such documents can merely reflect the fact that, as stated by Lt. Col. Cain that, "it could not be proven or disproven." The public is not comprised of total idiots the way LSP often seems to imply that they are, and they can make the assessment of it being "not sustained" as indicated by LSP and even draw their own conclusions as to just how diligently LSP may have tried to "sustain" claims of misconduct. Chairman Magee indicated considerable frustration with not only that revelation by Cain but also the ensuing run-around Cain began to make to Magee regarding the circumstances of Lt. Clary and his body-worn camera footage.

47.

On March 24, 2022, Ms. Holland followed up Captain Manale's statement regarding Trooper Lopez having no "sustained" disciplinary action with her own response to Petitioner regarding any disciplinary file pertaining to Trooper Lopez with the following statement contained in a 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."

48.

Petitioner has produced numerous features on the LSPC and its various members' escapades to include Petitioner videotaping two (2) members checking into a swank hotel shortly after a meeting of the LSPC (they both resigned from the LSPC within days, one at the urging of then-Col. Kevin Reeves, and one at the urging of Louisiana Gov. John Bel Edwards). Another feature entails one member openly bragging of backing a racing team driving across the U. S. at speeds of 130 MPH+

and having ten (10) license plates in the trunk of the vehicle to change out a plate if the car's plate was called out over the team's hidden-in-dashboard police scanner. Another recent feature focused on the fact that another LSPC member is presently under investigation for alleged improprieties entailing off duty assignments with the New Orleans Police Department.

49.

One retired trooper, Leon "Bucky" Millet, has indicated that LSPC was set up, "by State Police, for the benefit of State Police," and that the LSPC serves almost exclusively to protect troopers at the expense of providing any protection whatsoever to Louisiana taxpayers. He has openly called for the LSPC to be abolished.

50.

Another veteran law enforcement official and use-of-force expert, Lloyd Grafton, himself a former member of the LSPC who resigned in frustration at the, "total lack of integrity on the Louisiana State Police Commission," has also called for the LSPC to be abolished, and he has placed that request in writing among his suggestions for LSP enhancements to the Louisiana State Senate Committee on the Oversight of Louisiana State Police.

51.

Calls for abolishing the LSPC have intensified and gained momentum as evidenced by State Sen. Cleo Fields (D-Baton Rouge) sponsoring a bill (SB-239) in the 2022 Regular Session of the Legislature, which requires a Constitutional Amendment but would, if passed, abolish the LSPC.

52.

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. Such a letter is not appealable to the Commission except on the basis of discrimination or a violation of the Article or these Rules. The employee may submit a written response to any letter of counseling or warning issued to him or her, and

such response shall be attached to each copy of the letter of counseling or warning that is maintained by the employing agency.”

53.

Petitioner asserts that, by enacting rules such as Rule 12.9, the LSPC is complicit in LSP’s extensive efforts to shield the public from potentially problematic troopers who patrol Louisiana’s roadways.

54.

Petitioner further asserts that it is against public policy and the public’s right to know for the LSPC, particularly given its historical conduct by individual members and total lack of accountability to and protection of the public, to appoint itself as a body which can make declarations of what is public record and what is not. Were other stage governmental agencies afforded such power and it go unchallenged, then it would not be long before every state agency would “declare” something not a public record and thus completely obliterate Louisiana citizens’ rights to examine public documents!

55.

Petitioner asserts that the LSPC has overplayed its authority by implementing LSPC Rule 12.9 and that its rule is unequivocally inconsistent with the Louisiana Supreme Court’s ruling which plainly asserts the most liberal interpretation of public records such that, if any doubt may exist, the doubt must be resolved consistent with the public’s right to see.

56.

Petitioner is of the belief that the public’s right to know entailing Trooper Lopez’s letters of counseling, and potentially other redacted material in response to his public records request of January 7, 2022, exceed any “privacy interest” Trooper Lopez has. Further, an LSP Rule certainly does not constitute a statute, and Petitioner asserts that, by denying the public access to records to the degree that LSP does, LSP has fostered the proliferation of rogue actions such as that of the troopers involved in the Ronald Greene in-custody death and the egregious language contained in the arrest and apprehension of Antonio Harris.

57.

Petitioner asserts that is the rationale behind why the Louisiana Supreme Court has ruled that public records requests 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).

58.

In the present instance, LSP has declined to cite a statute and instead merely references an LSPC Rule which falls woefully short of a Louisiana statute as justification for not releasing the letters of counseling applicable for Trooper Lopez.

59.

At the aforementioned March 22, 2022 meeting of the Louisiana House Oversight Committee on the LSP In-Custody Death of Ronald Greene, virtually every member of the Committee expressed anger and frustration at the “lack of transparency” that was on full display at the Committee hearing. Petitioner asserts that those Committee Members are now enduring what Petitioner has been subjected to for years.

60.

For the foregoing reasons, Petitioner requests that this Honorable Court conduct an examination in camera of the 137 fully-redacted pages submitted to him by LSP in response to his public records request and make a determination of which, if any, pages should be un-redacted and be made available to Petitioner. Specifically, Petitioner seeks for this Honorable Court to make a determination as to whether Trooper Lopez’s “privacy interest” in any redacted documents exceeds the public’s right to know entailing those 137 fully-redacted pages.

61.

Petitioner furthermore avers that, upon judgment of this Honorable Court, he should be awarded costs of this litigation under LA R. S. 44:35(D).

WHEREFORE, in consideration of the above and foregoing Petition for Writ of Mandamus, together with the facts stated herein and the law and equities applicable in the premises, Petitioner respectfully moves this Honorable Court to grant the relief as prayed for in his Petition and order that Defendant produce to this Honorable Court the 137 fully-redacted pages of records provided to Petitioner in response to his public records request of January 7, 2022 for examination by this Honorable Court in camera to ascertain how many, if any, of the 137 pages should remain unredacted in accordance with Louisiana law. Petitioner finally prays for any and all equitable relief as is available, all costs of this proceeding as provided for under the Louisiana Public Records Law, as well as all other various relief to which Petitioner is entitled.

Respectfully Submitted,

Robert Edwin Burns, in proper person
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PLEASE SERVE:

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ROBERT BURNS

NUMBER 717529 DOCKET: 24

19TH JUDICIAL DISTRICT COURT

VERSUS

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

**AMENDMENT TO PETITION FOR WRIT OF MANDAMUS AND INCLUSION
OF ORDER PAGE**

NOW UNTO COURT comes Petitioner, Robert Edwin Burns, in proper person,
who hereby amends his Petition for Writ of Mandamus filed on April 5, 2022, as follows
and also provides an order page inadvertently omitted from the original petition (the
amendments are referenced by paragraph number):

23.

Paragraph 23 is amended to include the words “in Broussard, Louisiana” after the
words “Duchamp Road.”

29.

Paragraph 29 is amended to replace the word “forvever” with the word “forever”
as an obvious typographical error.

39.

Paragraph 39 is amended to add the word “approximately” before the number 173
and the number “173” is replaced with “175.”

54.

Paragraph 54 is amended to replace the word “stage” with the word “state” as an
obvious typographical error.


60.

Paragraph 60 is amended to replace both occurrences of the words “137 fully-
redacted pages” with “approximately 175 fully-redacted pages.”

Petitioner’s prayer for relief is amended to replace both occurrences of the words
“137 fully-redacted pages” with “approximately 175 fully-redacted pages.” Petitioner’s
prayer for relief is also amended to replace the words “pages of records provided to
Petitioner” with “both the approximate 175 fully-redacted pages and the 101 unredacted
pages.....for examination by this Honorable Court in camera.”

Respectfully Submitted,

Robert Edwin Burns, in proper person
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PLEASE SERVE:

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ROBERT BURNS

NUMBER 717529 DOCKET: 24

19TH JUDICIAL DISTRICT COURT

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PARISH OF EAST BATON ROUGE

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

STATE OF LOUISIANA

ORDER

Considering Petitioner Robert Burns' Petition for Writ of Mandamus filed on
April 5, 2022 together with amendments filed herein;

IT IS HEREBY ORDERED THAT THE Defendant, Col. Lamar A. Davis, in
his Official Capacity as Superintendent and Custodian of Records for the Louisiana State
Police, be served with the original petition of April 5, 2022 together with the foregoing
amendments together with a copy of this Order, and further that,

IT IS HEREBY ORDERED that the Defendant, Col. Lamar A. Davis, in his
Official Capacity as Superintendent and Custodian of Records for the Louisiana State
Police, shall produce both the redacted copies of the records produced to Petitioner and
unredacted copies directly to the undersigned so that the Court may conduct an *in camera*
inspection pursuant to the Louisiana Public Records Law LA R. S. 44:35(B).

IT IS FURTHER ORDERED that a hearing shall be hold on the _____ day of
_____, 2022, at _____ o'clock ____ m., and Defendant shall show
cause as to:

- Why said records should not be produced as requested for *in camera* inspection, and why the redacted pages should not be subject to Court review to ascertain if any records should be released to Petitioner pursuant to this Writ subsequent to *in camera* inspection by this Honorable Court.
- Why Defendant should not be taxed with the costs of this proceeding as permitted by law, and all other equitable and just relief as may be permitted by law.

Baton Rouge, Louisiana, this 18 day of April, 2022.



JUDGE
HONORABLE DONALD R. JOHNSON

PLEASE SERVE:

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