

SHELLEY SEBASTIAN

NUMBER: _____ DIV. _____

VERSUS

19TH JUDICIAL DISTRICT COURT

LOUISIANA STATE POLICE RETIREMENT SYSTEM
And IRWIN FELPS, DIRECTOR

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

MEMORANDUM IN SUPPORT OF PLAINTIFF’S PETITION FOR WRIT OF MANDAMUS

NOW INTO COURT, through undersigned counsel comes, Plaintiff Shelley Sebastian (“hereinafter Plaintiff”) and files the Memorandum in Support of her Petition for Writ of Mandamus, and in support thereof would show unto the Court as follows:

I. **INTRODUCTION**

Defendant, Irwin Felps (“hereinafter Defendant Felps”), Director of Louisiana State Police Retirement System provided Plaintiff with a Notice of Proposed Acton on December 11, 2018. Plaintiff responded per the Civil Service rules on December 19, 2018. Plaintiff received a letter of Termination from the Louisiana State Police Retirement System (“hereinafter LSPRS) on December 28, 2018, which was scheduled to take effect January 7, 2019. Plaintiff appealed her termination to the La. Civil Service on January 22, 2019, noting many inaccuracies in the documents submitted in support of its Notice of Proposed Action and Notice of Termination of Plaintiff. In response to the inaccuracies, LSPRS filed a rescission to the termination with the La. Civil Service on February 26, 2019, which was accepted by the Referee. Plaintiff was scheduled to return to work at LSPRS on March 11, 2019.

Plaintiff arrived to work on March 11, 2019, and Defendant Felps provided Plaintiff with a second Notice of Proposed Action dated March 11, 2019, which is larger than the previous 700-page Notice which included her 300+ page personnel file. Due to the number of inaccuracies found in the previous documents, Plaintiff submitted three (3) Public Records Request with the custodian of records, Defendant Felps on March 14 - 16, 2019. Plaintiff requested documents that Defendant failed to include in its Notice of Proposed Action. Defendant alleged Plaintiff is not entitled to discovery during the Notice of Proposed Action stage and Plaintiff must wait for the Notice of Termination and appeal to the Civil Service before it would be entitled to receive supporting documentation. Plaintiff has not received a response as of the date of filing this memorandum. Defendant Felps alleges LSPRS does not have to respond to the Public Records Request because it is asking an interrogatory. Defendant Felps refuses to provide any document to prove LSPRS is inaccurate before it has an opportunity to review and make changes to the documents in the public record before turning them over to Plaintiff.

Plaintiff is being terminated for not performing work she actually performed, being absent from work when she was using approved FMLA; forcing LSPRS employees to perform Plaintiff's job duties because she is out sick, making no reference that it was actually a different employee called out sick; not cleaning a boardroom that another LSPRS employees forced to clean up after meeting that was not cleaned by that employee; that LSPRS had issues with Plaintiff not completing her work since 2014 but only provided a "satisfactory" performance evaluation so Plaintiff will receive a raise in pay; that important documents could not be responded to timely because Plaintiff did not complete her work; and Plaintiff being slandered by LSPRS unfounded accusations all of which LSPRS produced no evidence besides a typed word document by Plaintiff's supervisor, Kimberly Gann and signed by said supervisor.

LSPRS requested the assistance of a Department of Public Safety Officer when Plaintiff returned to work, stating the LSPRS employees are afraid of Plaintiff and it needs someone to follow her as she navigates throughout the building. Defendant Felps refused to provide written justifications of such an agreement with the Department of Public Safety.

II. LAW AND ARGUMENT

The Public Records Law is meant to ensure that public documents are preserved and open to view by the public. The Public Records Law, and the Louisiana Constitution Article XII §3 states "no person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law. The Public Records Law is designed to ensure unfettered access to documents and to implement the inherent right of the public to be reasonably informed as to what public records contain and the manner, basis, and reasons upon which governmental affairs are conducted, while at the same time balancing the right of the public against the necessity for the custodian of public records to act in the public interest by protecting and preserving public records and against unreasonable dangers of loss or damage, or acts detrimental to the integrity of public records. Louisiana Public Records Law should be interpreted liberally, with any doubt resolved in the favor of the right of access¹.

No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law². The burden of proving that a public record is not subject to inspection copying or reproduction rest with the custodian³. The request need not include a specific name or type of document requested; it is sufficient that the requester gives a reasonable description of the

¹ *First Commerce Title Co., Inc. v. Martin*, 887 So. 2d 716 (La. App. 2nd Cir. 2004)

² Louisiana Constitution article XII, §3

³ La. R.S. 44:31B (3)

information sought⁴. Only exceptions provided for within this chapter and within the Louisiana Constitution are valid, and that all other exceptions, exemptions, and limitations pertaining to public records not provided for under Chapter 1 of Title 44 of the Louisiana Constitution shall have no effect⁵.

If a record is requested and the custodian raises a question regarding whether or not the requested record is a public record, the custodian must within three (3) days exclusive of Saturday, Sunday and legal public holidays, of receipt of the request, notify in writing the person making the request of the custodian's determination and reasons therefor. The written notification shall contain a reference to the basis under the law that the custodian has determined exempts the record or any part of the record from inspection, copying or reproduction.

A person who has been denied the right to inspect, copy, reproduce, or obtain a copy or reproduction of a record either by a determination of the custodian or by the passage of five days, exclusive of Saturdays, Sundays, and legal public holidays, from the date of his in-person written or electronic request without receiving a determination in writing by the custodian or an estimate of the time reasonably necessary for collection segregation, redaction, examination, or review of a records request may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, as well as payment of attorney's fees, costs, and damages⁶.

Any person having custody or control of a public record who violates any of the provisions of Chapter One of Title 44, or any person not having custody or control who and by conspiracy, understanding or cooperation with any other person hinders or attempts to hinder the inspection of any public record declared by that chapter to be subject to inspection shall upon first conviction be fined not less than one hundred dollars and not more than one thousand dollars, or shall be imprisoned for not less than one month, nor more than six months⁷.

The intentional removal, mutilation, destruction, alteration, falsification, or concealment of any record document or thing is a criminal offense: filed or deposited, by authority of law, in any public office or with any public officer, or defined as a public record and required to be preserved in any public office or by a person or public officer⁸. Filing a false public record is a criminal offense⁹. The filing or depositing for record in any public office or with any public official, or the maintaining as required by law, rule, regulation,

⁴ *Nungesser v. Brown*, 664 So. 2d 132 (La. App. 1st Cir. 1995)

⁵ La. R.S. 44:4.1

⁶ La. R.S. 44:35

⁷ La. R.S. 44:37

⁸ La. R.S. 14:132

⁹ La. R.S. 14:133

or rule with knowledge of its falsity, of: any forged document; any wrongfully altered document; any document containing a false statement or false representation of a material fact.¹⁰

Here, Defendant Felps is attempting to hinder the production of the public records to allow LSPRS employees time to review documents for mistakes and allow time for correction of those mistakes. Defendant Felps, takes the position that the documents need not be produced until there is a civil service appeal. Plaintiff originally had a due date of March 15, 2019 to respond to the Notice of Proposed Action and LSPRS was originally unwilling to allow additional time for the massive document. LSPRS agreed to allow Plaintiff until March 22, 2019 to respond to the Notice of Proposed Action. After receiving Plaintiff's response, LSPRS filed an Addendum to the Notice of Proposed Action on March 22, 2019, after it made corrections to dates its employees signed the Plaintiff's Performance Evaluation, and other documents, and is using this as an excuse to request an additional week to review all documents. LSPRS employees have made so many changes to the original document, subsequent documents received in each of the Notice of Proposed Action and Notice of Termination, it is not clear if the original exists. Plaintiff avers LSPRS took this action to avoid sending a document that is appealable to the Civil Service, further avoiding responding to the Public Records Request. Further delay would be detrimental to Plaintiff.

III. CONCLUSION

For the reasons stated herein, as set forth by La. R.S. 44:1 et seq., Plaintiff Shelley Sebastian prays that this Honorable Court enforce her constitutional and statutory right to Public Records in accordance with the law by:

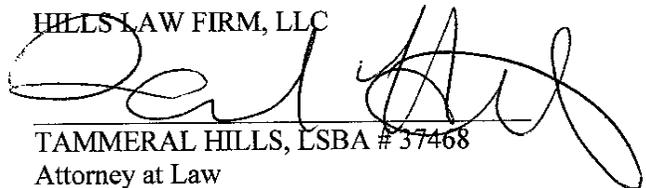
- 1) Issuing a Writ of Mandamus ordering Louisiana State Police Retirement System to allow Plaintiff an opportunity to inspect and review all public records as defined by La. R.S. 44:1, pertaining to the Notice of Proposed Action, Termination and Addendum, or any future document.
- 2) By issuing an injunction ordering Louisiana State Police Retirement System to allow Plaintiff an opportunity to inspect copy or reproduce records, upon any future request by Plaintiff relating to the Notice of Proposed Action, Termination, and Addendum, or any future document.
- 3) Enter a judgment in favor of Plaintiff, Shelley Sebastian, and against Defendant(s) Louisiana State Police Retirement System and its Director Irwin Felps, awarding Plaintiff attorney fees and other costs of litigation.

¹⁰ *Id.*

- 4) Find that Louisiana State Police Retirement System failure to respond to Plaintiff's request was unreasonable and arbitrary and as such order Louisiana State Police Retirement System to pay penalties for its failure to respond in accordance with La. R.S. 44:37.
- 5) Find that Louisiana State Police Retirement System failure to respond violated the provisions set forth in the Public Records Law and as such order it to pay a fine in accordance with La. R.S. 44:37.

RESPECTFULLY SUBMITTED

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PLEASE SERVE:

Louisiana State Police Retirement System and

Irwin Felps, Director

Through its Chief Executive Officer

Irwin Felps

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