

**THE CURRENT MEDIA, INC. d/b/a *THE CURRENT*; AND
CAPITAL CITY PRESS, LLC d/b/a *THE ACADIANA ADVOCATE***

NO. _____ DIV. _____

15TH JUDICIAL DISTRICT COURT

PARISH OF LAFAYETTE

STATE OF LOUISIANA

VERSUS

**JOSHUA S. GUILLORY, IN HIS OFFICIAL
CAPACITY AS PRESIDENT OF
LAFAYETTE CONSOLIDATED
GOVERNMENT AND CUSTODIAN OF
RECORDS**

PETITION PURSUANT TO THE PUBLIC RECORDS LAW

NOW COMES Petitioners who, pursuant to the Louisiana Public Records Law, La. Rev. Stat. § 44:1 *et seq.*, do, does hereby allege, aver, espouse, attest, and state as follows, to-wit:

1.

Petitioners are news organizations covering the Lafayette community, and which employ reporters to investigate, inform, and relay information to the general public. Part of this charge includes exercising their right to review, copy, and inspect Public Records. Your Petitioners are:

- The Current Media Inc., d/b/a *The Current*, a Louisiana non-profit organization which employs and is led by its Executive Editor, Christaan Mader, who, at all times relevant, was in course and scope of his employment with *The Current*.
- Capital City Press, L.L.C., d/b/a *The Acadiana Advocate*, a Louisiana company and the state's largest news organization, publishing *The Acadiana Advocate*, *The (Baton Rouge) Advocate*, and *The New Orleans Advocate / The Times-Picayune / NOLA.com*, and the employer of Megan Wyatt, who, at all times relevant, was in the course and scope of her employment with *The Acadiana Advocate*.

2.

Made Defendant/Respondent herein is **Joshua S. Guillory, in his Official Capacity as Mayor-President and Custodian of Records for Lafayette Consolidated Government.**

INTRODUCTION

3.

This case involves an egregious and intentional abuse of the Public Records Law, which exists to allow the exercise of a fundamental right found in the Louisiana Constitution of 1974.

4.

Instead of hiding records or destroying them, Defendant Guillory has decided to make it as difficult as possible for the public to review and copy records so as to ensure that there is no questioning of his administration, being so bold as to say, on his Sept. 15, 2022 radio show on KPEL, that the fee is directed squarely at news outlets:

I wish every media outlet had to pay \$100 a page. You can put me on the record with that. All these media outlets, they pry and pry, they take our directors away from helping people just to pry and pry and make up things.¹

5.

While Defendant Guillory's disdain for the news media is certainly legal and unsurprising, his treatment of the news media as "different" is misplaced—the media have no more rights than a citizen does under the Louisiana Constitution, which 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.²

The Legislature has chosen to implement this constitutional, fundamental right through the Public Records Law (and the Open Meetings Law), for which the Defendant has also shown blatant contempt and capricious behavior. Therefore, this Court should hold him personally liable for the attorney's fees, costs, and damages sought herein.

6.

In the 2022 Regular Session of the Louisiana Legislature, Representative Royce Duplessis (D-H.D.93, New Orleans) introduced HB 473, which clarified the law to ensure that custodians could "establish and collect reasonable fees for making copies" of electronic records³:

¹ Exhibit A-002, Taylor, Claire, 9/15/22, "Lafayette mayor wants to charge media \$100 per page for public records because 'they pry and pry'" *The Acadiana Advocate*, available at https://www.theadvocate.com/acadiana/news/article_1ea6af00-35e4-11ed-a53f-dbf355b52ea7.html

² La. Const. Ann. art. XII, § 3

³ Exhibit B, HB 473 / Act 337

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 44:32(C)(1)(a) is hereby amended and reenacted to read as follows:

§32. Duty to permit examination; prevention of alteration; payment for overtime;
copies provided; fees

* * *

C.(1)(a) For all public records, except public records of state agencies, it shall be the duty of the custodian of such public records to provide copies to persons so requesting. The custodian may establish and collect reasonable fees for making copies of public records, which may include the transmission of electronic copies of public records. The custodian may request payment of fees in advance of production. Copies of records may be furnished without charge or at a reduced charge to indigent citizens of this state.

7.

HB 473 was signed by the Governor and became law as Act 337.⁴

THE CURRENT REQUESTS

8.

On August 24, 2022, Christiaan Mader, in the course and scope of his employment with *The Current*, sent a Public Records Request pursuant to the Louisiana Public Records Law to Lafayette Consolidated Government via e-mail to the designated Public Record Request e-mail. *See Exhibit C at 001-3*. The request sought various documents including payments made to local contractors, documentation, and other records of payment related to the Bayou Vermilion Flood Control Project. It also requested electronic copies of documents. *Id.*

9.

A week later, in response, Michael D. Hebert, a private attorney who stated he was acting as an “Assistant City-Parish Attorney for Lafayette City-Parish Consolidated Government,” stated that he had evaluated the requests and provided an estimate of the time reasonably necessary to provide the documents sought in accordance with La. Rev. Stat. § 44:35. He then stated that he would require pre-payment of production. *Id.*

10.

⁴ *Id.*

Later, Mr. Hebert disclosed to *The Current* that the \$1 per page was due to Act 337, and that the cost of production would be \$70. Instead of paying, Mr. Mader simply reviewed the records at Mr. Hebert's office.

11.

On September 7, 2022, Mader, in the course and scope of his employment with *The Current*, made another Public Records Request in the same manner. In the second request, he sought the invoices and certain, specific e-mails between LCG Chief Financial Officer Lorrie Toups and Deloitte Touche, LLP, a nationally recognized audit, accounting, and tax advisory firm working for LCG.

12.

Again, a week later (the maximum time allowed by law), Mr. Mader received the same response from Mr. Hebert, who stated he would need pre-payment to deliver the documents. The Invoice required Mr. Mader to pay \$856.00 for production of the public documents. *Id.*

13.

The invoice, Exhibit C-007, stated that due to Act 337, the Defendant LCG would be charging \$1.00 per page for electronic copies. It sought a payment of \$856.00 for 856 pages. *Id.* It further stated that Mr. Mader could only pay by check or money order – despite the City-Parish taking numerous forms of payment for various other services.

THE ADVOCATE REQUEST

14.

On September 1, 2022, Megan Wyatt, a reporter for *The Acadiana Advocate*, in the course and scope of her employment with *The Advocate*, made a Public Records Request pursuant to the Louisiana Public Records Law to Lafayette Consolidated Government via a form at the LCG building, requesting “August 2022 visitor sign-in sheets for City Hall.” *See Exhibit C-01*. She later followed up with an e-mail request to the same Public Records e-mail Mr. Mader used. *Id. at 02-03*.

15.

The next day, September 2, 2022, via e-mail, she received a response from the Assistant to the City-Parish Attorney Gregory J. Logan, which stated that pre-payment was required, same as was requested of Mr. Mader. *See Exhibit C-01-02*. The response also requested \$1 per page.

16.

Rather than pay the exorbitant price of \$1 per page, Ms. Wyatt decided to exercise her right to view the records instead of pursuing copies.⁵

17.

Ms. Wyatt was prohibited from doing so, unless she paid the invoice attached hereto as Exhibit D, in violation of La. Rev. Stat. § 44:32(C)(3), which states that “No fee shall be charged to any person to examine or review any public records...”

THE DEFENDANT IS VIOLATING THE PUBLIC RECORDS LAW

18.

The Petitioners seek to enjoin the Defendant from continuing to violate the Public Records Law, and declare that the Defendant has no basis for charging \$1 per page for electronic records. The Public Records Law, at §44:35(A), states that any person aggrieved may:

[I]nstitute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney fees, costs and damages

19.

Petitioners request that, pursuant to La. Rev. Stat. §44:35(B), that this matter be tried “**by preference and in a summary manner.**”

20.

Here, Petitioners seek to enjoin the Defendant from continuing to violate the law by charging an unreasonable fee for production of electronic records, for this Court to declare that \$1 per page for electronic records is an unreasonable fee, and to order the Defendant to allow for the lawful inspection of public records without charge.

21.

Further, Petitioners seek attorney’s fees and costs pursuant to La. Rev. Stat. § 44:35(D) (1), and that this Court cast Defendant Guillory in judgment with an award of civil penalties of \$100 per day for the unreasonable, arbitrary and capricious actions detailed herein.

⁵ La. Rev. Stat. § 44:35

22.

In addition, Defendant Guillory, in setting his arbitrary and capricious fee of \$1 per page for electronic production of records, appears to also be violating the Lafayette Home Rule Charter, Section 2-11, which requires that the Councils approve all “assessments and charges,” including regulating the “rates or other charges for service,” from the government. On information and belief, this has not occurred, and the Defendant is acting unilaterally.

23.

Defendant is attempting to use a codification of cases which allowed for the charging of copying fees for electronic records to punish the Plaintiffs due to his opinions about their coverage of his administration. But, the authorities on this subject have repeatedly stated that a custodian of public records cannot charge a requestor for anything other than the **actual cost** of copying records. In the case of electronic records, the actual cost of production – an e-mail (as opposed to paper) – is *de minimus*. Therefore, most public bodies do not charge or charge a “flat fee” such as \$15 or \$25 for electronic requests.

24.

The standard rate for copies of public records is .25 cents per page.⁶ Fees charged by Louisiana public bodies for public records produced electronically range from \$15-\$25 per response – not per page. The Division of Administration fee schedule for state government entities charges \$15 for a CD or disk, and .25 per one-sided *paper* copy.⁷ This contemplates that a piece of paper and some sort of physical copying is involved. Fees for indigent and public interest requests are sometimes waived in accordance with the law.⁸

25.

In 2015, the Attorney General reaffirmed that an entity may not recoup costs incurred in the original creation of the record or based on the value of the record or its contents.⁹ The more

⁶ See, e.g., La. Admin Code. Tit. 4 S I-301(B)(1).

⁷ *Id.*, by example, The Louisiana Department of Revenue and the Louisiana Alcohol and Tobacco Control Board both charge \$15 for electronic production, as an example.

⁸ La. Rev. Stat. § 44:32(C)(2) (“Copies of records may be furnished without charge or at a reduced charge to indigent citizens of this state or the persons whose use of such copies, as determined by the custodian, will be limited to a public purpose, including but not limited to use in a hearing before any governmental regulatory commission.”)

⁹ See Op. Atty. Gen., No. 15-0056, October 8, 2015.

recently elected Attorney General’s office has also agreed that custodians cannot charge for the work of preparation and redaction—only actual copies.¹⁰

26.

Put simply, the Defendant cannot charge for anything other than a copy of the record, not for its value or because he does not “like” the requestor—he must charge a reasonable fee.

27.

The Petitioner avers that the operation of Lafayette City-Parish Government is a matter of public interest and public concern, and that raising the price on electronic records, the preferred method of public records requests, is an issue which will affect the public’s ability to review records of importance.

28.

Clare Taylor, on behalf of Petitioner *The Acadiana Advocate*, requested an explanation from the LCG communications department on September 15, 2022. The request was sent by Ms. Tonya LaCoste Trealek of LCG to the Legal Department, and was not responded to by filing.

29.

It is the law of Louisiana that: “No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.” La. Const. Art. 12, Sec. 3.

30.

Furthermore, “Providing access to public records is a responsibility and duty of the appointive or elective office of a custodian and his employees.” La. Rev. Stat. § 44:31.

31.

“All persons and public bodies having custody and control of any public record” are required by law to preserve the public record “for a period of at least three years.” La. Rev. Stat. § 44:36.

32.

A custodian of Public Records has five days, exclusive of Saturdays, Sundays and legal public holidays, to produce public records. La. Rev. Stat. § 44:33.

¹⁰ *Id.*

33.

Suits filed under the Public Records Law “shall be tried by preference and in a summary manner.” La. Rev. Stat. § 44:35(C).

34.

As stated in La. Rev. Stat. § 44:31(B)(3), the “burden of proving that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian.”

35.

The Louisiana Public Records Law at La. R.S. 44:35(B) allows for *in camera* inspection of documents in controversy, and the Petitioner requests such an inspection.

36.

The Louisiana Supreme Court has held that the Public Records Law 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.2d 933, 936 (La. 1984).

37.

Petitioners assert that the outstanding request is well within the faculties and capability of the Defendant to answer for a reasonable fee.

38.

Petitioner furthermore avers that upon judgment of this Honorable Court, they should be awarded reasonable attorneys’ fees and other costs of litigation under La. Rev. Stat. § 44:35(D) (“[a prevailing petitioner] *shall be awarded* reasonable attorney's fees and other costs of litigation.”) [*Emphasis added.*]

WHEREFORE, in consideration of the above and foregoing Petition, together with the facts stated herein, the exhibits appended hereunto, and the law and equities applicable in the premises, Petitioners respectfully move this Honorable Court to grant the relief as prayed for in this Petition and enjoin the Defendant from charging an unreasonable fee for public records. Petitioners further (separately and/or conjunctively) pray for this Honorable Court to order the

defendant to ensure that the public's right to view or observe public records in person without charge in accordance with Louisiana law. Petitioner further prays for attorneys' fees and costs, in conjunction with the Louisiana Public Records Law, and, separately and conjunctively, and arbitrary and capricious damages against the Defendant. Petitioners further pray for any and all equitable relief as is available, and 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:

DURIO MCGOFFIN STAGG & GUIDRY

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RECORDS**

ORDER

Considering the Petition pursuant to the Public Records Law, which requires that any action filed “shall be tried by preference and in a summary manner,”:

IT IS HEREBY ORDERED that the Defendant, **Joshua S. Guillory, in his Official Capacity as Mayor-President and Custodian of Records for Lafayette Consolidated Government.**, be served with the foregoing Petition and a copy of this Order, and that the Defendant show cause as to the actual cost of reproduction of electronic records for \$1 per page, and as to why the Petitioner’s employee was not allowed to exercise her right to review public records as provided by the Public Records Law; and

IT IS FURTHER ORDERED that a hearing shall be held on the _____ day of _____, 2022, at _____ o’clock ____m., and Defendant shall show cause as to:

- Why said Petition should not be granted and the Defendant enjoined;
- Why the declaration sought in the Petition should not be issued;
- Why the Defendant should not be taxed with costs and attorneys’ fees, as well as penalties for an arbitrary and capricious failure to comply with the law, as permitted by law, and all other equitable and just relief as may be permitted by law.

Lafayette, Louisiana, this _____ day of _____, 2022.

HONORABLE JUDGE

PLEASE SERVE:

**Joshua S. Guillory, in his Official Capacity
as Mayor-President and Custodian of Records
for Lafayette Consolidated Government**

**705 West University Avenue
Lafayette, LA 70506**