

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ DIVISION

TERESA KNAPP-GORDON

PLAINTIFF

v.

Case No. 60-CV-15-_____

DR. DEXTER SUGGS, in his official capacity
as Superintendent of the Little Rock School District

DEFENDANT

APPEAL FROM DENIAL OF RIGHTS PURSUANT TO ARK. CODE ANN. § 25-19-107

COMES NOW the Plaintiff, Teresa Knapp-Gordon, by and through undersigned counsel, and for her Appeal from Denial of Rights under the Arkansas Freedom of Information Act, states:

Parties, Jurisdiction, and Venue

1. Plaintiff Teresa Knapp-Gordon is a resident of Pulaski County, Arkansas, and an employee of the Little Rock School District.
2. Defendant is, and was at all times relevant to this action, the Superintendent of the Little Rock School District.
3. Defendant is the custodian of certain employee-evaluation and/or personnel records within the meaning of Ark. Code Ann. § 25-19-103(1)(a), as he is “the person having administrative control of that record.”
4. Venue and jurisdiction are proper in this Court pursuant to Ark. Code Ann. § 25-19-107(a).

Facts

5. On or about April 7, 2015, Plaintiff submitted a request under the Arkansas Freedom of Information Act (“AFOIA”), Ark. Code Ann. §§ 25-19-101 through -110, for records

related to a Little Rock School District (“LRSD”) investigation of Plaintiff and other teachers at Thomas Jefferson Elementary School.

6. On or about that same date, Valerie Hudson, Defendant’s Executive Assistant, responded to the AFOIA request on behalf of Defendant, told Plaintiff that Plaintiff could not have the requested records because “the records you seek are part of a current investigation and cannot be released at this time.”
7. Plaintiff asked for additional clarification as to why the records would not be released, and, on April 8, 2015, Defendant responded, “The records you seek are part of a current investigation and cannot be released at this time.”
8. Plaintiff inquired further and pointed out that the records pertained to Plaintiff and were, therefore, subject to release under the AFOIA.
9. Ms. Hudson, responding on behalf of Defendant, stated that the records could not be released unless certain factors were met, pursuant to Ark. Code Ann. § 25-19-105(c)(1).
10. On April 13, 2015, undersigned counsel, on behalf of Plaintiff, contacted Defendant and demanded production of the records by noon on April 14, as the request had been pending for almost a week at that point.
11. As of the filing of this lawsuit, no documents have been produced in response to Plaintiff’s April 7 request.

Claim 1: Violation of the Arkansas Freedom of Information Act

12. Plaintiff restates the allegations and facts in paragraphs 1 through 11, *supra*, as if laid out in full herein.

13. The records requested by Plaintiff are properly classified either as personnel records or as employee-evaluation records, as those are the only two exemptions from disclosure in the AFOIA for records related to employees. *See* Ark. Code Ann. § 25-19-105(b)(12) (exempting “[p]ersonnel records to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy”); Ark. Code Ann. § 25-19-105(c)(1) (exempting “employee evaluation or job performance records” absent certain conditions); *see also* Op. Ark. Att’y Gen. 2013-002 (noting, “the FOIA provides two exemptions for employee-related records: the “personnel records” exemption under A.C.A. § 25-19-105(b)(12) ... and the exemption under A.C.A. § 25-19-105(c)(1) [for] “employee evaluation or job performance records”).
14. These exemptions only apply where someone other than the person about whom the records are maintained is the party requesting the records. *See* Op. Ark. Att’y Gen. 2012-074 (“The FOIA specifically authorizes a public employee to gain access to his or her own personnel records and employee evaluations”).
15. Under Ark. Code Ann. § 25-19-105(c)(2), “Any personnel or evaluation records exempt from disclosure under this chapter shall nonetheless be made available to the person about whom the records are maintained or to that person’s designated representative.”
16. Because Plaintiff is “the person about whom the records are maintained,” she is entitled to those records as a matter of law.
17. Because Ark. Code Ann. § 25-19-105(c)(1) only applies where someone other than the subject of the records is requesting those records, Defendant’s assertion that the records were not subject to release because the investigation was ongoing is incorrect on its face;

indeed, the very next clause of the AFOIA makes abundantly clear that Plaintiff was entitled to the records that she requested, and that subsection of the statute imposes no requirement that the investigation be completed or any of the other conditions that Defendant sought to impose on Plaintiff before the requested records would be released. *See Ark. Code Ann. § 25-19-105(c)(2).*

18. Defendant was not substantially (or even slightly) justified in his failure to provide these records in a timely manner—and certainly no later than April 10, 2015—inasmuch as the dictates of the AFOIA are clear on this point, the cases that have interpreted the AFOIA do not support Defendant’s position, the Attorney General’s opinion on which Defendant partially relied is inapposite to this situation, and myriad other opinions make clear that Plaintiff was entitled to these records.

19. Because Defendant continued to refuse to provide the records even after Plaintiff’s attorney provided Defendant with citation to the applicable portion of the AFOIA and a relevant Attorney General’s opinion, Defendant was negligent in knowing failure to perform a legal duty (e.g., to provide the requested records).

Prayer for Relief

WHEREFORE the Plaintiff, Teresa Knapp-Gordon, prays that this Court will enter a judgment in her favor, ordering the immediate production of the records, finding that Defendant was not substantially justified in his refusal to provide the records upon request, awarding Plaintiff attorney’s fees and costs, and granting any other relief to which Plaintiff is entitled.

Respectfully submitted,

/s/ Matthew D. Campbell

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