

**IN THE CIRCUIT COURT OF MACON COUNTY
STATE OF ALABAMA**

FRANK DILLMAN,

*

*

PLAINTIFF.

*

*

V.

*

CASE NO.:

*

JURY TRIAL REQUESTED

MACON COUNTY COMMISSION,

*

LOUIS MAXWELL, CHAIRMAN FOR

*

THE MACON COUNTY COMMISSION,

*

AND ACTING COMMISSIONERS

*

MILES ROBINSON, ANDREW

*

THOMPSON, EDWARD HUFFMAN,

*

AND ROBERT BERRY,

*

*

DEFENDANTS,

*

COMPLAINT FOR DECLARATORY RELIEF AND RELIEF IN THE FORM OF

MANDAMUS

FRANK DILLMAN, a citizen of Macon County, brings this Complaint against the MACON COUNTY COMMISSION, Chairman of the Macon County Commission, LOUIS MAXWELL, and Commissioners MILES ROBINSON, ANDREW THOMPSON, EDWARD HUFFMAN and ROBERT BERRY, seeking a writ of

mandamus compelling the defendants to comply with the terms of Ala. Code § 36-12-40, Alabama's Open Records act.

1.

Plaintiff seeks an order requiring the Defendants to disclose and/or cause to be disclosed all public records, receipts and documents, that have to this point been requested by the Plaintiff under the Open Records Act. Despite numerous written and oral requests to the Defendants, they have refused to make these records public, and have utilized numerous attempts and methods to stall what are reasonable, specific, and should be non-controversial requests.

2.

The Alabama Open Records Act states that "every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute." See Ala Code § 36-12-40. No statute provides for the exemption of the documents Plaintiff seeks in this action.

3.

The Alabama legislature intended for the Open Records Act to be "liberally construed." Chambers v. The Birmingham News Co. 552 So.2d 854 (Ala 1989). There is a presumption in favor of public disclosure of records under the act.

4.

The relief sought is in the public interest, with no foreseeable legitimate downside to the defendants. Most of the documents requested and denied bear a direct

relationship to the use of taxpayer dollars by the commission. Members of the public have the clear right to this information, especially when there is no good reason to deny it.

5.

The denial of access to the requested documents by the Defendants violates the Open Records Act. Plaintiff respectfully asks the Court to order the Defendants to produce or cause to be produced to the Plaintiff the requested documents. Plaintiff further seeks an order pursuant to the Declaratory Judgment Act, Ala Code § 6-6-220, declaring that the Defendants are required to comply with the Open Records Act and requiring the Defendants to cease and desist their policy of denying access to the requested documents.

PARTIES

6.

Plaintiff FRANK DILLMAN is a private citizen, and former member of the US Navy, who is passionate about oversight with respect to local government.

7.

The MACON COUNTY COMMISSION as a whole is named a party to this suit. As a public entity, it is subject to the Alabama Open Records Act.

8.

Defendant LOUIS MAXWELL is the Macon County Commission Chair. As such, he is responsible to the citizens of the state of Alabama as a public servant.

Defendant MAXWELL is sued both in his individual capacity and in his official capacity for declaratory and injunctive relief.

9.

Defendant MILES ROBINSON is commissioner of District 1. Defendant ROBINSON is sued both in his individual capacity and in his official capacity for declaratory and injunctive relief.

10.

Defendant EDWARD HUFFMAN is commissioner of District 2. Defendant HUFFMAN is sued both in his individual capacity and in his official capacity for declaratory and injunctive relief.

11.

Defendant ANDREW THOMPSON is commissioner of District 3. Defendant THOMPSON is sued both in his individual capacity and in his official capacity for declaratory and injunctive relief.

12.

Defendant ROBERT BERRY is commissioner of District 4. Defendant BERRY is sued both in his individual capacity and in his official capacity for declaratory and injunctive relief.

JURISDICTION-VENUE

13.

Jurisdiction and venue in this matter are properly located in the Circuit Court of Macon county.

FACTS

14.

Plaintiff FRANK DILLMAN is an interested citizen of Macon County, who has devoted nearly a decade to following county governance in the manner that is often abstractly lauded, but practically derided. He has used the Open Records Act in the past to request documents that are expressly contemplated by the Act. Originally, these requests were granted, but following a single request, that for the specific uses of 2 county gas cards, and details relating to the specific filling stations used, he has been effectively blown off several times in subsequent requests for documents that are, and should always be, of public record. It is believed that the documents withheld in regards to this original denial are or were, according to Fuel Supplier WEX, in the possession of the Commission. The Open Records Act, in addition to providing for the taking or copying of Public Records, also contemplates an affirmative duty on the part of all government officials to preserve records and correspondence relating to government functions.

15.

The following are just a partial selection of documents Mr. Dillman has requested but been denied.

- a. Street Addresses or locations for fuel purchases associated with WEX cards 006 and 002, requested November 19th 2015, December 21st 2015, July 1st 2016, March 13th 2017, April 10th 2017, April 25th 2017 and through Plaintiff DILLMAN'S attorney, on April 2nd 2018. These requests also cover any documents provided by WEX to the Commission which would add detail or context to information provided by WEX, especially the detailed reports that are normally provided by WEX to clients as a matter of course.
- b. Business license data, requested December 31st 2015. This was later provided in a different electronic format than requested or routinely used for such functions, one which was unreasonable and which scrambled the data to the point where it took many hours for Plaintiff DILLMAN to reconstruct. This method runs counter to the established caselaw in the state of Alabama.
- c. Chairman's salary, requested on August 3rd 2016.
- d. County contract with WEX fuel supply, requested on June 12th 2017. A written answer from the county claimed that there is no contract with WEX.
- e. 2018 approved Budget, requested on December 2nd, 2017.
- f. 2018 Proposed Budget, requested on September 21st, 2017.
- g. A request on February 12th 2018 for all cover letters or county forms for other citizens requesting records, which has been totally ignored.

Since many of these records requests have been made, a state of sarcastic enmity has been directed towards Plaintiff DILLMAN by Chairman MAXWELL. Because the documents have not been provided, Plaintiff DILLMAN is prevented his opportunity to engage as a citizen regarding county affairs with the quality of information that is guaranteed to him by statute. It appears from the history of the records requested, that the Defendants have engaged in retaliation designed to frustrate Plaintiff DILLMAN'S future attempts to be involved and adequately informed.

CLAIM

VIOLATION OF THE ALABAMA OPEN RECORDS ACT

17.

Plaintiff incorporates herein and re-allege, as if fully set forth herein, all factual allegations set forth in the foregoing paragraphs and exhibits.

18.

Alabama Code § 36-12-40 provides that “every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute.”

19.

Alabama's Open Records Act presumes records to be available for public inspection, and the burden is on the public agency to justify non-disclosure by showing that the information or document requested falls within a public records exception.

20.

No statute or case law provides for the exception of the requested materials.

21.

That to the extent that fees are levied on Open Records Request, that they are required to be reasonable, and related to the expense or effort used by personnel, not attorneys, in procuring the document, with the usual case being that there is no charge. It is crucial that fees are not levied with an eye towards dissuading the public from making requests.

22.

It is the general rule, and has been the policy of this state for a number of years, to advocate open government.” Chambers v. The Birmingham News Co., 552 So.2d. 854,857 (Ala. 1989). It is this very concept, the advocacy for open government, that has been the Plaintiff’s passion for years. He has a right to the documents he seeks, and disclosure would serve the purpose for which the Open Records Act was enacted: protecting the interest of citizens in assessing the performance of public officers and institutions. The Defendant’s refusal to provide the requested documents violates the Open Records act.

PRAYER FOR RELIEF

23.

WHEREFORE, for the foregoing reasons and such other reasons as may appear to be the Court just and proper, Plaintiff respectfully requests that the Court

(A) declare that Alabama Code §36-12-40 prohibits the Defendants from denying Plaintiff access to public documents generated by the Macon County Commission, including all documents related to the WEX fuel service company (contracts, detailed reports including the addresses used by Macon County employees), all budgetary information and the salary of the chairman.

(B) Order the Defendants through a writ of mandamus to produce the following records to the Plaintiff pursuant to the open records act.

I. All detailed WEX Reports, including those which provide the locations of fuel stations utilized.

II. Any and all contracts, agreements or documents provided by WEX.

III. Any documents denoting or specifying the Commissioner's salary.

IV. 2018 Enacted Budget.

V. 2018 proposed budget as of September 2017.

VI. All other withheld requests submitted by the Plaintiff.

(C) In the alternative, should the Court find that some or all such records are not subject to the Open Records Act, require Defendant to produce or cause to be produced all records requested by Plaintiff pursuant to Rule 27 of the Alabama Rules of Civil Procedure;

(D) Award the plaintiff reasonable attorney's fees and costs under the authority of Bell v. The Birmingham News Co. 576 So.2d 669, 67–671 (Ala Civ. App. 1991) and Slawson v. Alabama Forestry Comm'n, 631 So. 2D 953, 959 (Ala. 1994);

(E) Grant such other further and alternative relief as law, equity and justice requires.

This 26th day of October, 2018

Respectfully Submitted,

/s/ William Love
William Thompson Love (LOV-036)
P.O. Box 7, Ryland Alabama, 35767
Email: Billylovelaw@gmail.com

