



July 14, 2020

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Ms. Hazeline F. Carson, City Clerk  
City of West Palm Beach  
401 Clematis Street  
West Palm Beach, FL 33401

Dear Ms. Carson:

I am writing on behalf of the First Amendment Foundation (FAF). One of FAF's members, Sandy Matkivich, recently requested certain public records from the City of West Palm Beach. More specifically, Ms. Matkivich requested that the City provide:

- The number of WPB Police Officers assigned to the Mayor's Dignitary Security;
- Any documentation confirming the number of officers assigned to the Mayor's Dignitary Security;
- The amount of dollars each officer is paid for service on the Mayor's Dignitary Security; and
- Any documentation confirming the amount of dollars paid to each officer.

We are writing to again request these public records. We disagree that the exemption cited by the City applies. The exemption cited is not intended to conceal the requested information from the public. Further, the six pages of information that was provided to Ms. Matkivich for \$132.09 are not responsive to her request. In other words, the City did not provide what Ms. Matkivich paid for, and it is extremely difficult to believe that the fee she paid reflects the City's "actual cost" of producing the records. *Trout v. Bucher*, 205 So. 3d 876 (4th DCA 2016).

**The public records law is to be liberally construed in favor of open government, and exemptions are to be construed narrowly so they are limited to their stated purpose.** See *City of Petersburg v. Romine ex rel. Dillinger*, 719 So. 2d 19 (Fla. 2d DCA 1998), *reh'g denied*; *Christy v. Palm Beach Cty.. Sheriff's Office*, 698 So. 2d 1365 (Fla. 4th DCA 1997); *Gillim v. Tribune Co.*, 503 So. 2d 327 (Fla. 1987); *Seminole Cty.. v. Wood*, 512 So. 2d 1000 (Fla. 5th DCA 1987); *Tribune Co. v. Pub. Records*, 493 So. 2d 480 (Fla. 2d DCA 1986), *review denied*; *Bludworth v. Palm Beach Newspapers Inc.*, 476 So. 2d 775 (Fla. 4th DCA 1985), *review denied*, 488 So. 2d 67 (Fla. 1986); *Miami Herald Publ'g Co. v. City of N. Miami*, 452 So. 2d 572 (Fla. 3d DCA 1984), *approved*, 468 So. 2d 218 (Fla. 1985).

In refusing to provide the public records for which Ms. Matkivich paid in advance, you forwarded the following response:

It appears from the statute that the disclosure of the number of officers on the team and the names of the officers who serve on the Mayor's protection team would be exempt as information revealing surveillance procedures and personnel and may be a plan prepared by a criminal justice agency relating to mobilization, deployment or tactical operations if responding to an emergency as defined in Fla. Stat. 252.34 as set forth below. See 119.071(2)(d). However, in citing the exemption, you merely have to cite 119.071(2)(d).

The language of Section 119.071(2)(d), Florida Statutes, referencing "personnel" has been interpreted to protect the identity of **undercover officers** engaged in active operations. When the mayor's detail protects him, in public, they are seen, identified, and not working "undercover." See *Rameses, Inc. v. Demings*, 29 So. 3d 418 (Fla. 5th DCA 2010).

Significantly, the United States Secret Service is required to disclose similar information regarding the number and costs of the President's Security Detail under FOIA. And it is worth noting that Florida's Public Record Law, enshrined in Florida's Constitution, is much broader and provides greater transparency than the federal Freedom of Information Act. Therefore, it does not seem likely that this information could reasonably be construed to pose any such risk to your mayor, unlike the revealing of precise location and timing of the Governor's transport exempted in *Executive Office of the Governor v. AHF MCO of Florida, Inc.* 257 So. 3d 612 (Fla. 1st DCA 2018).

We suggest that your citation to Section 199.071(2)(d) is in error and could be interpreted as wrongfully concealing documents that belong to the taxpayer according to law. We request that you provide the records requested above as soon as possible and at no further cost. Please do not hesitate to contact me if you wish to discuss these issues further.

With best regards,



Pamela C. Marsh  
President  
First Amendment Foundation

cc: Mayor Keith James  
Kim Rothenberg, City Attorney