

EUGENE COLLINS : 19TH JUDICIAL DISTRICT COURT
VS. : PARISH OF EAST BATON ROUGE
EAST BATON ROUGE PARISH
SCHOOL BOARD AND GWYNN SHAMLIN: STATE OF LOUISIANA

PETITION FOR WRIT OF MANDAMUS

NOW INTO COURT, through undersigned counsel, comes Eugene Collins, plaintiff, and files this petition to enforce his rights under the Louisiana Public Records Act, La. R.S. § 44:1, *et. seq.*, and La. Const. Art. 12 § 3 (“No person shall be denied the right to . . . examine public documents, except in cases established by law.”) as follows:

1.

Petitioner Eugene Collins is a Louisiana resident of the age of majority.

2.

Made Defendants/Respondents herein are the East Baton Rouge Parish School Board (“the Board”), a political subdivision of the State of Louisiana located in East Baton Rouge Parish and Gwynn Shamlin, a person of the full age of majority who is the custodian of records for the Board.

3.

The Board is a “public body” as that term is defined by the Louisiana Public Records Act, La. R.S. § 44:35(A)(1) (“public body means any branch, department, office, agency, board, commission, district, governing authority, political subdivision, or any committee, subcommittee, advisory board . . . designated as an entity to perform a governmental or proprietary function.”). Accordingly, the Board is subject to the Louisiana Public Records Act.

4.

Defendant Shamlin is the Board’s “custodian” of records as that term is defined by the Louisiana Public Records Act at La. R.S. § 44:1(A)(3) (“the word ‘custodian’ means the public official or head of any public body having custody or control of a public record, or a representative specifically authorized by him to respond to requests to inspect any such public records.”).

5.

This is a proceeding brought by plaintiff pursuant to La. R.S. § 44:35 for a writ of mandamus ordering defendants to produce certain public records and for attorneys’ fees and

costs. Defendants' principal offices are located in the City of Baton Rouge, East Baton Rouge Parish, Louisiana, and venue is proper in this Court under La. R.S. 44:35(A).

6.

On May 21, 2020, plaintiff submitted a written public records request (the "May 21 request") by e-mail to defendant the Board, through its custodian of records, defendant Shamlin. That request is attached as Exhibit "A" and made part of this suit as if fully recited herein.

7.

As public bodies and custodians of the public records at issue herein, defendants had and continue to have affirmative and mandatory constitutional and statutory duties to (a) provide plaintiff with a written response to plaintiff's public records request, identifying each public record or portion thereof which defendants believe is excepted or exempted from production by a specific provision or provisions of the Louisiana Constitution of 1974 or the Louisiana Public Records Act and (ii) each provision of the Louisiana Constitution of 1974 and/or the Louisiana Public Records Act the custodians and/or the public body have determined excepts or exempts that public record or portion thereof from production; and (b) provide plaintiff with full and complete copies of all public records in the possession, custody, or control of defendants or any of its officers, agents, representatives, or employees, which are covered by and responsive to plaintiff's May 21 request, as amended, unless some or all of those public records are excepted or exempted from production by a special provision or provisions of the Louisiana Constitution of 1974 or the Louisiana Public Records Act. *See* La. R.S. §§ 44:4.1, 31-35.

8.

Under Louisiana law, the "burden of proving that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian." La. R.S. § 44:31(B)(3). The Louisiana Supreme Court has further held public records laws are to 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) (internal citation omitted).

9.

To date, defendants have not produced the requested public records, nor have they identified specific records or portions thereof believed to be excepted or exempted, as required by the Louisiana Public Records Act, La. R.S. §§ 44:4.1 and 44:31-35.

10.

“Public records” as defined by the Louisiana Public Records Law, La. R.S. § 44:1(A)(2)(a), include “all books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body.”

11.

Upon information and belief, defendants possess, retain, and/or control public records responsive to plaintiff’s request.

12.

Defendants have willfully and knowingly failed or refused to comply with their constitutional and statutory duties to provide plaintiff full and complete copies of the public records sought without redaction, alteration or modification and have substantially defeated plaintiff’s constitutional and statutory right to access public records. *See, e.g.*, La. Const., Art. 12, § 3 (“No person shall be denied the right to . . . examine public documents, except in cases established by law.”); La. R.S. § 44:4.1(A); § 44:31(A), (B)(2)-(3); § 44:32(C)(2); § 44:32(D).

13.

As the custodians of the public records at issue in this proceeding and the public body in possession, custody, or control of those public records, defendants knew or should have known (a) the public’s right to inspect and obtain copies of those public records was and is a fundamental right guaranteed by the Louisiana Constitution of 1974; (b) the public’s right to inspect and obtain copies of those public records can only be denied when the Louisiana

Constitution of 1974 or the Louisiana Public Records Act (La. R.S. § 44:1, *et seq.*) specifically and unequivocally so provide; and (c) any exceptions to, exemptions from, or limitations upon the public's right to inspect and obtain copies of public records contained in the Louisiana Public Records Act (La. R.S. § 44:1, *et seq.*) are in derogation of the public's right to be reasonably informed and will be strictly and narrowly construed. *See, e.g.,* La. Const., Art. 12, § 3; *City of Baton Rouge/Parish of East Baton Rouge v. Capital City Press, L.L.C.*, No. 2007-1088, pp. 13-15 (La. App. 1st Cir. 10/10/08), 4 So.3d 807, 816-817.

14.

Defendants acted arbitrarily, capriciously and unreasonably by withholding documents responsive to the May 21, 2020 public records request and by failing to produce true and correct copies of these documents without redaction, alteration, or modification.

15.

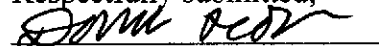
Plaintiff is entitled to recover all attorneys' fees and all costs and expenses of litigation which plaintiff has incurred and will incur in connection with this proceeding from defendants, pursuant to and in accordance with the provisions of La. R.S. §§ 44:35(D) & (E)(1).

16.

Plaintiff is entitled to have this proceeding to enforce the provisions of the Louisiana Public Records Act against defendants tried by preference and in a summary manner, pursuant to and in accordance with the provisions of La. R.S. § 44:35(C).

WHEREFORE, Eugene Collins, plaintiff herein, prays, that a writ of mandamus be issued to defendants, the East Baton Rouge Parish School Board and Gwynn Shamlin, directing defendants to produce all public records requested, without modification, alteration, or restriction, or to show cause on a date and at a time to be fixed by the Court, not less than two (2) nor more than ten (10) days after service of the writ of mandamus on defendants, why the writ of mandamus should not be made peremptory and why defendants should not be ordered to pay plaintiff's reasonable attorneys' fees and all costs incurred by plaintiff. Plaintiff further prays for full general and equitable relief and for all orders and decrees which are necessary or proper.

Respectfully submitted,



Donald C. Hodge, Jr.
Bar Roll Number 29251
4148 Palm Street
Baton Rouge, LA 70808
(337) 794-8873 (v)

PLEASE SERVE:

EAST BATON ROUGE PARISH SCHOOL BOARD
through its President, Michael Gaudet
6545 Millstone Ave.
Baton Rouge, LA 70808-5113

GWYNN SHAMLIN
Custodian of records
Office of the General Counsel
1050 S. Foster Drive
Baton Rouge, LA 70806

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PARISH OF EAST BATON ROUGE

AFFIDAVIT

BEFORE ME, the undersigned Notary Public, personally came and appeared:

Eugene Collins

who, after being duly sworn, did depose and say:

1. He is the petitioner in the above-titled case and has read the allegations made in the petition and to the best of his knowledge and belief the allegations are true.
2. He made the public records request of May 21, 2020 to the East Baton Rouge Parish School Board and has received no response.



SWORN TO AND SUBSCRIBED, before me, this 4th day of June 2020.



NOTARY PUBLIC

Donald C. Hodge, Jr.

Notary Public

#79545

EUGENE COLLINS : 19TH JUDICIAL DISTRICT COURT
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ORDER

Considering the foregoing pleadings, it is ordered that defendants, the East Baton Rouge Parish School Board and Gwynn Shamlin show cause, if they can, on the _____ day of _____, 2020, at _____ .m. at the 19th Judicial District Court located at 300 North Boulevard, Baton Rouge, Louisiana 70801, Room _____ why a writ of mandamus should not be issued herein directed to defendants, the East Baton Rouge Parish School Board and Gwynn Shamlin, requiring defendants to produce all public records requested, without modification, alteration, or restriction, or to show cause on a date and at a time to be fixed by the Court, why the writ of mandamus should not be made peremptory and why defendants should not be ordered to pay plaintiffs' reasonable attorneys' fees and all costs incurred by plaintiff.

Read and signed this _____ day of June, 2020 at Baton Rouge, Louisiana.

DISTRICT COURT JUDGE

May 21, 2020

"A"

Eugene Collins
Michael McClanahan
NAACP
P.O. Box 2901
Baton Rouge, LA 70802
May 21, 2020

Gwen Shamlin
East Baton Rouge Parish School System
1050 South Foster Drive
Baton Rouge, LA 70806

CC: All significant parties

Via Electronic Mail at gshamlin2@ebrschools.org
East Baton Rouge Parish School System
1050 South Foster Drive
Baton Rouge, LA 70806
Re: Public Records Request

Dear Mr. Shamlin:

Under the **Louisiana Public Records Act § 44:1 et seq.**, We're requesting an opportunity to inspect or obtain copies of all public records or documents, specifically ALL Emails and Text Messages from ALL Boardmembers about the East Baton Rouge Parish School System Superintendent Search, Interview Process, Community Feedback, or Public Meetings both sent and received which show ALL communications about the ENTIRE process. We request that these emails/messages start on December 1, 2019, and end on December 31, 2019.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$501.00. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the best interest of the public. It will contribute significantly to the public's understanding of East Baton Rouge Parish Schools.

Section 44:32(D) of the Louisiana Public Records Act requires a response within three business days. If access to the records I am requesting will take longer than that period, please contact me with information about when I might expect copies or the ability to inspect the requested documents.

If you deny any or this entire request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Sincerely,

May 21, 2020

Eugene Collins
Michael McClanahan
NAACP
P.O. Box 2901
Baton Rouge, LA 70802
May 21, 2020