

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2012

RICHARD C. ALTHOUSE,
Appellant,

v.

PALM BEACH COUNTY SHERIFF'S OFFICE,
Appellee.

No. 4D11-1560

[May 30, 2012]

PER CURIAM.

Richard C. Althouse, the petitioner below, appeals a circuit court order denying his petition for writ of mandamus, in which he challenged the Palm Beach County Sheriff's Office's (PBCSO) denial of his public records request. We affirm.

Althouse filed a request with PBCSO seeking “[a]ny and all public records” in an ongoing criminal investigation. PBCSO denied his request, asserting that there was a hold on the information because it pertained to an active homicide investigation and prosecution. Althouse filed a writ of mandamus with the circuit court and requested that the court compel PBCSO to provide him with the requested documents.

At an evidentiary hearing, PBCSO argued that the records were part of an active criminal investigation, and, thus, exempt from the Florida Public Records Act. Althouse argued that some of the information may be exempt, but that PBCSO was still required to provide him with redacted copies of the records. PBCSO then discussed an *in camera* inspection of the records, but Althouse objected. He did not want an *in camera* inspection unless certain requirements were met, and he did not feel that an inspection would be necessary. Ultimately, the trial court denied Althouse's request. The court found that PBCSO could assert that the file “as a whole is exempt from production based on the active criminal investigation exemption.”

“The determination of whether something is a public record is a question of law subject to *de novo* review and is determined on a case-by-

case basis.” *Bent v. State*, 46 So. 3d 1047, 1049 (Fla. 4th DCA 2010) (citations omitted). Section 119.011(3)(a), Florida Statutes, defines criminal intelligence information as “information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.” Section 119.011(3)(b), Florida Statutes, defines criminal investigative information as “information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission. . . .” Such information is exempt from disclosure under Florida’s Public Record Laws. *See, e.g., Avila v. Miami-Dade Cnty.*, 29 So. 3d 401, 405-06 (Fla. 3d DCA 2010).

In this case, the parties do not dispute that there is an ongoing criminal investigation. As such, the majority of PBCSO’s records may very well be exempt based upon the aforementioned statutes. However, Althouse objected to an *in camera* inspection of the records, thereby precluding the trial court from conducting an intelligent review of the documents. It is thus impossible to ascertain which parts of the record, if any, are available to the public. *See Walton v. Dugger*, 634 So. 2d 1059, 1061-62 (Fla. 1993) (“When, as in the instant case, certain statutory exemptions are claimed by the party against whom the public records request has been filed or when doubt exists as to whether a particular document must be disclosed, the proper procedure is to furnish the documents to the trial judge for an *in camera* inspection.”); *see also Evtl. Turf. Inc. v. Univ. of Fla. Bd. of Trs.*, 37 Fla. L. Weekly D775 (Fla. 1st DCA Apr. 2, 2012) (“[A]n in-camera inspection is ‘generally the only way for a trial court to determine whether or not a claim of exemption applies.’” (quoting *Garrison v. Bailey*, 4 So. 3d 683, 684 (Fla. 1st DCA 2009))).

Usually, the trial court’s failure to conduct an *in camera* inspection of the record would constitute reversible error. *See Christy v. Palm Beach Cnty. Sheriff’s Office*, 698 So. 2d 1365, 1368 (Fla. 4th DCA 1997) (holding that the trial court committed reversible error when it failed to conduct an *in camera* inspection of records, and remanding with directions that the court conduct an *in camera* inspection and determine what portion of the records are subject to disclosure). However, in this case, Althouse invited the trial court’s ruling by arguing against an *in camera* inspection and asserting that one would not be necessary. *See Held v. Held*, 617 So. 2d 358, 360 (Fla. 4th DCA 1993) (“A party cannot claim as error on appeal that which he invited or introduced below.” (citations omitted)). The trial court was unable to determine what portions of the record were subject to disclosure without conducting an

in camera review. Under the facts and circumstances of this case, we are compelled to affirm the trial court's ruling.

Affirmed.

TAYLOR, CIKLIN and GERBER, JJ., concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Glenn D. Kelley, Judge; L.T. Case No. 502011CA001773XXXXMB.

Richard C. Althouse, West Palm Beach, pro se.

Fred H. Gelston, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.