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STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 0759

JUSTIN COX

VERSUS

JIM BELLO IN HIS CAPACITY AS PARISH ADMINISTRATOR
AND JOHN GOSSERAND IN HIS CAPACITY AS PUBLIC
UTILITIES DIRECTOR AND MEL BUECHE IN [HER] CAPACITY
AS PRESIDENT OF THE POLICE JURY

***DATE OF JUDGMENT:* DEC 23 2014**

ON APPEAL FROM THE EIGHTEENTH JUDICIAL DISTRICT COURT
NUMBER 45,213, DIVISION B, PARISH OF POINTE COUPEE
STATE OF LOUISIANA

HONORABLE J. ROBIN FREE, JUDGE

* * * * *

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Counsel for Defendants-Appellees
Jim Bello, in his capacity as Parish
Administrator, for Pointe Coupee
Parish; John Gosserand, in his capacity
as Public Utilities Director; and Mel
Bueche, in her capacity as President of
the Police Jury

* * * * *

BEFORE: KUHN, PETTIGREW, AND WELCH, JJ.

Disposition: AFFIRMED.

KUHN, J.

Plaintiff-appellant, Justin K. Cox, appeals a trial court judgment dismissing his petition seeking a writ of mandamus, costs, and attorney fees. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

On January 16, 2013, Mr. Cox submitted an email request to John Gosserand, the Public Utilities Director of Pointe Coupee Parish, to produce the following records:

1. Any accounts receivables 90 days or more past due.
2. If there are accounts that are 90 days past due, are they still Receiving service? If so, I want a list of the identifying information and the amount owed.
3. For accounts that are beyond the cutoff date for garbage, are they still receiving service? Did someone pick up their garbage can?
4. For the last 2 years, A list of account adjustments in which a customer has been given credit, a bill written off, adjusted, or any other action that where someone owed us money and an action was taken to decrease the amount shown as an amount owed. This includes bad debt/write off.
5. In reference to request # 4, what established policies adopted by the police jury is [sic] in place to address the above? If there is [sic] no policies in place, how and who makes the decision to handle such actions?

On January 18, 2013, Mr. Gosserand sent Mr. Cox an email responding to his request, as follows:

2. If an account is 90 days past due, then the service is disconnected. The only way it is turned back on is when they pay the bill and a reconnect charge. (Gas & Water)
3. The Jury has never established a cut-off for garbage. What we did was File lawsuits with the DA's office, through John Wayne. The last time we did that was about 2 years [ago]. We have picked up several cans in the past, but was [sic] never directed to do a wide spread pick-up by the Jury, for fear of the litter problem it would pose.
4. The only bad debt/write off that I know of was done by Faulk & Winkler some years ago. Unfortunately, the amounts were never

taken off our billing system. Becky verified this with Tommy Lejuene.

5. To my knowledge, [there are] no set policies in place. It is left up to the discretion of Tommy Lejuene.

1. The person who owns the software that we use for the utility billing, is creating a report to break down the 90 days past due. (Gas & Water)

Mr. Gosserand testified that he contacted Harry Porter, the Parish's outside IT person located in Monroe, Louisiana, about creating a report detailing the information Mr. Cox requested, which were accounts receivable 90 days or more overdue and a list of any adjustments made to customer accounts. According to Mr. Gosserand, that information was included in the Parish's computer database, but not in the specific report format that Mr. Cox sought.

Mr. Cox sent additional emails requesting that he be provided with the information he requested in January. Mr. Gosserand followed up with Mr. Porter on March 14, 2013, asking for a progress report on the 90-days past due accounts receivables list. Mr. Porter replied on March 18, 2013, giving instructions on how to generate a "Trial Balance Report" that would include accounts with a debit balance. However, he explained that the "Trial Balance Report" would contain all accounts with a balance due, and not just those that were 90-days or more overdue. He stated it would be necessary to scan the entire report to locate the accounts 90-days or more overdue. According to Mr. Porter, in order to generate reports containing only accounts that were 90-days or more overdue, it would be necessary to make programming changes that he estimated would cost approximately \$480.00 (3 hours of programming time at \$160.00 per hour).

Mr. Gosserand testified that at some point he was able to create and print a report containing the 90-days overdue account receivables and had an administrative assistant mail it to Mr. Cox, but that it was never received by Mr. Cox. He then printed another copy of the report and gave it John Wayne Jewel, the

Assistant District Attorney who represented the Pointe Coupee Parish Police Jury, to give to Mr. Cox.

On March 26, 2013, Mr. Cox received the report, but complained in an email sent that same date that the information was inaccurate because it was not up to date, ending in December 2012. The next day Mr. Cox sent an email stating that the information he had received up to that point was also incomplete because the report did not include all of the gas and water accounts. He further stated that he planned to file suit for alleged violations of public records law. On April 2, 2013, Mr. Cox filed suit, naming as defendants Jim Bello in his capacity as Parish Administrator, John Gosserand in his capacity as Public Utilities Director, and Mel Bueche in her capacity as President of the Police Jury (collectively defendants). Within two days of the suit being filed, Mr. Cox received the remainder of the information he sought.

After a hearing, the trial court signed a judgment dismissing Mr. Cox's petition for mandamus, with prejudice, and ordered each party to bear its own costs. The trial court denied Mr. Cox's motion for new trial. He now appeals, arguing the trial court erred in dismissing his petition for mandamus, in denying an award for attorney fees and costs, and in denying his motion for new trial.

LAW

Louisiana Constitution Article XII, Section 3, provides that: "No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law." This provision must be construed liberally and in favor of free and unrestricted access to the records; access can be denied only when a law specifically and unequivocally provides otherwise. Whenever doubt exists as to whether the public has a right of access to certain records, that doubt must be resolved in favor of the public's right to see the records. To allow otherwise would be an improper and arbitrary restriction on the

public's constitutional rights. *Capital City Press v. East Baton Rouge Parish Metropolitan Council*, 96-1979 (La. 7/1/97), 696 So.2d 562, 564; *Title Research Corporation v. Rausch*, 450 So.2d 933, 936 (La. 1984).

The foregoing constitutional provision has been codified in the Louisiana Public Records Act, La. R.S. 44:1 *et seq.*, which includes in its definition of "public records," all documentary materials, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the performance of any function under the authority of the constitution or laws of this state. La. R.S. 44:1A(2)(a). The burden of proving that a public record is not subject to inspection, copying, or reproduction rests with the custodian. La. R.S. 44:31B(3).

Louisiana Revised Statutes 44:35D, provides that:

If a person seeking the right to inspect or to receive a copy of a public record prevails in such suit, he shall be awarded reasonable attorney's fees and other costs of litigation. If such person prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion thereof.

ANALYSIS

The record reflects that defendants did not deny Mr. Cox's request for public records. Some of the information Mr. Cox requested was provided in March, prior to the filing of his petition for mandamus, although he alleges that the information provided was incomplete. Moreover, Mr. Cox testified that he received all the remaining records he requested within two days of filing his petition for mandamus.

At the hearing held on this matter, defendants explained that the information requested by Mr. Cox did not exist in the form that he requested, which was in the format of reports or lists rather than raw data. While the information requested by Mr. Cox, including all accounts receivables 90-days or more overdue and a list of all adjustments made to customer accounts, was contained in the public records, that information was not accessible in report form within those specific perimeters

at that time. After consulting with the Parish's IT person, Mr. Gosserand was advised that, in order to generate reports complying with Mr. Cox's request for only accounts that were 90-days or more overdue, it would be necessary to make software programming changes estimated to cost approximately \$480.00. The Louisiana Supreme Court, however, has held that a custodian need only produce or make available for copying, reproduction, or inspection the existing records containing the requested information, and is not required to create new documents in the format requested. *Nungesser v. Brown*, 95-3005 (La. 2/16/96), 667 So.2d 1036, 1037; see also *Williams Law Firm v. Board of Sup'rs of Louisiana State University*, 03-0079 (La. App. 1st Cir. 4/2/04), 878 So.2d 557, 563.¹

In this case, Mr. Cox never requested that he be allowed to inspect or copy the raw data contained in the Parish's databases in order to compile himself the specific reports or lists he wanted. Instead, he expected the defendants to create these reports or lists for him. Mr. Gosserand testified that when Mr. Cox had verbally requested the information at issue on January 3, 2013 – prior to making his written public records request – he showed him the available accounts receivable report and Mr. Cox indicated it was too lengthy and that Mr. Gosserand should try to get it condensed. At the hearing, Mr. Cox admitted that what he requested and wanted to receive from the defendants were reports. Further, even though Mr. Cox contends that the reports he sought were readily available from the Parish's computer database merely by pushing a few buttons, he

¹ Mr. Cox asserts incorrectly that this court's decision in *Johnson v. Broussard*, 12-1982 (La. App. 1st Cir. 6/7/13), 118 So.3d 1249, is directly on point and supports his position because it dealt directly with a custodian's duty to print out information subject to a public records request from a computer database. The plaintiff in *Johnson* initially made a public records request to the Louisiana Board of Pharmacy (the Board) to produce a list of pharmacies, together with various types of information relating to each pharmacy. When the Board indicated that its computer system was unable to generate reports compiling the list of information requested, the plaintiff modified his request to seek a digital copy of the Board's licensure database for pharmacies and pharmacists. Thus, the issue before the *Johnson* court was whether the plaintiff was entitled to a digital copy of the database, not whether the custodian was required to generate a report containing the information he sought. Because it is factually distinguishable and involved an entirely different issue than the present case, *Johnson* is not applicable herein.

presented absolutely no evidence to support this contention other than his bare assertions to that effect.

A person seeking public records has the right to choose how he will receive the public records requested. Mr. Cox, however, did not merely request public records, but sought to receive reports or lists extracted and compiled from the public records by the custodian. Since he was not entitled to such, he was not entitled to any relief through a petition for mandamus. The fact that the defendants nevertheless chose to accommodate his request, even though they were not required to do so, does not alter this conclusion. Under the circumstances, we find no error in the trial court's dismissal of Mr. Cox's petition for mandamus, costs, and attorney fees. Nor do we find any error or abuse of discretion in the trial court's denial of his motion for new trial. This motion was based on Mr. Cox's contention that the trial court's judgment was clearly contrary to the law and the evidence, a contention that we find to be without merit. The trial court properly denied the motion for new trial.

CONCLUSION

For the assigned reasons, we affirm the judgment of the trial court dismissing Mr. Cox's petition for mandamus with prejudice. All costs of this appeal are to be paid by Mr. Cox.

AFFIRMED.