

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR PUTNAM COUNTY, FLORIDA

FRANCIS EVERETT,

Plaintiff,

v.

CASE NO. 2016-CA-459

PUTNAM COUNTY, FLORIDA,
a political subdivision of the State of
Florida,

Defendant.

**FINAL ORDER GRANTING DEFENDANT, PUTNAM COUNTY, FLORIDA'S
MOTION FOR SUMMARY JUDGMENT**

This cause came to be heard upon Defendant, Putnam County, Florida's ("the County") Motion for Summary Judgment on October 11, 2017. The Court having considered the Motion, the Affidavits and Deposition Transcript, and other evidence¹ filed in support of the Motion, and having heard the argument of counsel, finds that there are no material facts in dispute and that based upon those undisputed material facts that Summary Judgment is entered on behalf of Putnam County, as set forth below.

UNDISPUTED FACTS

On July 13, 2016, Putnam County Attorney Stacey Manning received two emails with attached letters (the "Request") from attorney Zachary Broome requesting public records on behalf of his client, the Plaintiff. The Request, set forth in two separate letters, held a total of ten

¹ The County has filed a Request for Judicial Notice with regard to the County's Resolution No. 2015-75. The Plaintiff has agreed that judicial notice should be taken of the County's Resolution. The County's Request for Judicial Notice is granted. See § 90.202(10), 90.203, Fla. Stat.

individual requests. Three of the individual requests related to permitting files maintained by the County's Building Department. These requests read as follows:

- Copies of all permits, and all Putnam County documents related to each permit filed by Francis "Earl" Everett, Direct Factory Housing, LLC, A and W Homes, or any combination thereof.
- Copies of all permits, and all Putnam County documents related to each permit referencing work to be performed by or on behalf Francis "Earl" Everett, Direct Factory Housing, LLC, A and W Homes, or any combination thereof.
- Copies of all permits, and all Putnam County documents related to each such permit, relating to the placement of a mobile home by a contractor, person, or entity other than Francis "Earl" Everett, Direct Factory Housing, LLC, or A and W Homes.

All requests were for records "from the last five years," July 2011 through July 2016. Seven other requests were also made for records pertaining to various documents including minutes, agendas, audio records, communications, photographs, and documents mentioning or referring to Francis "Earl" Everett, Direct Factory Housing, LLC, or A and W Homes, among others.

Upon receipt of the Request, Mr. Manning contacted the Planning and Development Services Director Bryan Hammons and Building Official Kevin Powell to determine the time and resources necessary to fulfill the Request, and particularly as it related to the County's permitting files. At the meeting it was determined that the Request would require significant time, effort, resources, and staff review and supervision, as the Request was much broader than any other request the County had received in the past.

Particularly, as it contained to permitting records, at a minimum the Request would require that tens of thousands of pages of public records would have to be located, reviewed and made available for inspection, including redaction of any required information. Many of the documents

are not electronically stored, and not easily searchable. The three categories of permitting files requested ultimately sought all of the mobile home and modular home permits for the five-year period of time set forth in the Request, including any permit file that might contain documents “referencing work” to be performed by or on behalf of Plaintiff or his companies.

The Building Department has processed approximately 20,961 permits from October 2011 through September 2016. At the time the Request was made, the permitting files were stored only in a physical form, and were not stored electronically. Although the building department is in the process of electronically archiving its records, the process just began in 2016, and the majority of the documents retained by the building department, including the permit files, are in paper form. In fact, to date the building department has archived only up to 2007. The majority of the permit documents requested by Plaintiff are stored in an archive warehouse next to the building department. The documents are stored in boxes that are ordered by permit number. Other permitting documents are stored within the Building Department.

The Building Official has access to a database where certain information regarding permit files may be searched. This generally includes the owner of the property name, contractor name, permit number, parcel number, 911 address, and date of issue. However, the contents of the permit files are not contained on this database. It is not possible for the Building Official to tell from the database which permit files contain documents referencing work to be performed by or on behalf of the Plaintiff and related companies. It is also not possible to search the database to find only the mobile home files. The permitting files contain files for both conventional homes and mobile homes, and they are not separated. Although the physical application would have this information, the database cannot be searched in this manner. Each physical permit file—more than 20,000 files—would need to be reviewed to locate those permit files which are relevant to the Request.

After the relevant files are located, the files would need to be reviewed to ensure any information that is required or permitted by law to be withheld is redacted, including social security and driver's license numbers. In addition, all permit files which would need to be pulled are original, physical files. Therefore, a records custodian would need to be present during any physical inspection of these files to ensure their safekeeping. The County's Building Official estimated that to determine the relevant files and to redact the appropriate information would take approximately four weeks of work, based on the breadth of the Request.

For compilation, review and supervision for the individual Requests particularly pertaining to the Building Department files, it was determined by the Building Official that members of County Building Department staff capable of performing and supervising the records request, as well as redacting any exempt or confidential information are:

- i. Brenda Gallo (Contractor Licensing) hourly salary plus benefits of \$23.26.
- ii. Donald Peckham (Plans Examiner) hourly salary plus benefits of \$40.89.
- iii. Leo Wadson (Assistant Building Official) hourly salary plus benefits of \$45.27.
- iv. Kevin Powell (Building Official) hourly salary plus benefits of \$50.40.

The work would need to be divided depending on the day between these four employees. An average of the labor cost to perform the tasks necessary to fulfill the Request, is \$39.95 hourly. Although lower than its estimated actual cost of labor to perform the special services for this Request, the County utilized a lower figure of \$30 hourly, based on the County's adopted administrative cost for hourly building department services. This administrative charge, adopted by Resolution, was in place at the time of the Request. In fact, this charge has been the same since the 1990s.

After meeting, County staff, along with the County Attorney, estimated a reasonable service charge of \$5,000.00, based on the administrative charge of \$30 set forth in the County's adopted rate resolution, and the estimate of approximately four weeks to locate, redact, and make the requested documents available for inspection. This estimate was conservative for two reasons. First, the labor cost of \$30 used is lower than the labor cost for the actual personnel needed for the clerical and supervisory assistance required. Additionally, the estimate was made only as to the documents under the custody of the Building Official. Other documents included in the Request, including for communications and other documents regarding Plaintiff and related entities, minutes, agendas, and audio recordings, were not considered as part of this estimate.

Mr. Manning responded to Plaintiff's Request by email, and relayed that the County would require a \$5,000.00 advance deposit due to the breadth of the Request. In an effort to limit the time and expense involved in producing the documents, the County Attorney offered to assist Plaintiff's counsel in narrowing down his requested documents. Plaintiff's counsel did not respond to this offer. The County Attorney also offered that Plaintiff's counsel could bring in his own copy machine as a cost savings measure.

Subsequently, the County Attorney was contacted by Plaintiff's counsel requesting an inspection of the records, as opposed to requiring copies. The County Attorney responded in writing, notifying Plaintiff's counsel that some of the information requested could be obtained by the County searching email and electronically stored Word documents, which would be at minimal expense. However, the remainder would require the deposit in order for a County employee to oversee handling of the files, supervise inspection, and ensure redaction of any confidential or exempt information. The County Attorney also explained that any additional amounts would be due once the initial deposit was exhausted, and that any unused portion of the deposit would be

refunded by the County. The County Attorney also invited Plaintiff's counsel to contact Kevin Powell, the Building Official, to further coordinate the process. Mr. Powell was never contacted, to coordinate the process or to schedule a time to view the documents.

No advance deposit has been tendered by Plaintiff for inspection of the documents pursuant to the Request, nor has the County received any clarification to narrow down the documents requested. Instead, Plaintiff brought this action, seeking to enforce the public records law.

LEGAL CONCLUSIONS

The sole issue in this case is whether the County's requirement of a \$5,000 advance deposit as to Plaintiff's public records Request was reasonable and based on the labor costs actually incurred or attributable to the County. § 119.07(4)(d), Fla. Stat. (2016). Based on the undisputed summary judgment evidence submitted by the County, which was not controverted by any evidence submitted by Plaintiff, the County's calculation of the allowable service charge complied with the requirements of law, and was a reasonable estimate of the labor costs actually incurred or attributable to the County.

In Florida, access to public records is a matter of such importance that it is constitutionally guaranteed. Art. I, § 24(a), Fla. Const. "At the same time, Florida has long required those who seek such records to defray the extraordinary costs associated with their requests." Bd. of County Commissioners v. Colby, 976 So. 2d 31 (Fla. 2d DCA 2008). Under section 119.07(4)(d), Florida Statutes:

If the nature or the volume of the public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the

personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisor assistance required, or both.

§ 119.07(4)(d), Fla. Stat. (2016). It is “prudent” for public agencies to require an advance deposit given the legislature’s determination that taxpayers should not shoulder the entire expense of responding to an extensive request for public records. Colby, 976 So. 2d at 37.

The calculation made by the County has been approved by the Florida appellate courts. Colby, 976 So. 2d 31. In Colby, documents were requested from Highlands County regarding a hurricane preparedness workshop. The County determined that the documents related to these activities were located in four file boxes, and that the request required extensive research. The County calculated the charge would be based on the cost of the designated employee’s salary and benefits multiplied by the estimated time to complete the work, which was estimated to be four hours. On appeal, the Second District Court of Appeal approved this formula, and determined that the labor cost was appropriately calculated based on both salary and benefits of the designated employee. Id. at 37. In addition, the Second District rejected the requestor’s argument that a deposit could not be required for the inspection of the records, as opposed to a request to have the records copied, and specifically stated: “the special service charge applies to requests for both inspection and copies of public records when extensive clerical assistance is required.” Id. The Court also determined that the County may collect a deposit before beginning the research, as long as it is reasonable and based on the labor cost that is actually incurred by or attributable to the County. Id.

The County’s calculation of the amount of the required deposit in this case is conducive to the formula used in Colby. The County’s estimate was based on a cost—\$30 per hour—that was actually \$9.95 less per hour than the average salary and benefits of the four employees qualified

to pull the documents², supervise inspection, and review the documents for information which is confidential or exempt under the Florida public records law.

In addition, the volume of documents requested in this case is extensive. The County has demonstrated through the summary judgment evidence that it has no ability to search its permit files electronically for the requested records. The original physical permit files, which for the five years at issue total 20,961 files, must be examined by hand. Because of this extensive volume of records that must be examined to comply with the Request, either by the County, or under the supervision of the County, the County's estimate of \$5,000 deposit, based on \$30 per hour of labor costs, amounting to 4 weeks of time, is reasonable under the circumstances. In addition, the County specifically advised Plaintiff's counsel that the \$5,000 special service charge was a deposit, and that costs not actually incurred or attributable to the County would be refunded.

The Court specifically rejects Plaintiff's argument that the County's estimate failed to comply with the law based on the County allegedly requiring Plaintiff to bring in his own copier to copy the documents. First, the unrefuted summary judgment evidence demonstrates that the County did not impose a mandate on Plaintiff regarding an outside copier, but that the County recommended an outside copier to the extent Plaintiff was trying to save on costs. Second, the special service charge was separate and apart from any copying costs. The summary judgment evidence demonstrates that the County would charge its normal rates for copying any documents, if requested by Plaintiff, consistent with its adopted fee schedule and Florida Statutes.


² In this case, the summary judgment evidence demonstrated that the review of documents or supervision would have to be divided amongst these staff members. Thus, it was appropriate to use an average in the estimate of labor costs actually incurred or attributable to the County. See Trout v. Bucher, 205 So. 3d 876 (Fla. 4th DCA 2016).

The County's required deposit amount of \$5,000.00 for the public records Request at issue in this action is consistent with section 119.07, Florida Statutes (2016), and all other requirements of law. Plaintiff is not entitled to a writ of mandamus.

NOW THEREFORE, it is **ORDERED AND ADJUDGED** as follows:

1. The Court determines that it has jurisdiction over this matter and that there are no material facts in dispute.
2. The Defendant's Motion for Summary Judgment is GRANTED. Final Summary Judgment is entered on behalf of Defendant, Putnam County.
3. The Court reserves jurisdiction to consider a timely motion to tax costs.
4. Plaintiff shall take nothing by this action and the Defendant shall go hence without day.

DONE and **ORDERED** in Chambers at Palatka, Putnam County, Florida on this 16th day of October, 2017.



SCOTT C. DUPONT
Circuit Judge

Copies furnished to:

Derek A. Schroth
Zachary T. Broome
BOWEN SCHROTH
600 Jennings Avenue
Eustis, Florida 32726
dschroth@bowenschroth.com
zbroome@bowenschroth.com
ahasselbring@bowenschroth.com
Attorneys for Plaintiff

Gregory T. Stewart
Carly J. Schrader
Kerry A. Parsons
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
gstewart@ngnlaw.com
cschrader@ngnlaw.com
kparsons@ngnlaw.com
legal-admin@ngnlaw.com
**Attorneys for Defendant Putnam County,
Florida**