

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 0847

CHARLES RODGERS

VS.

CHIEF OF POLICE, FREDDIE DRENNAN,  
SLIDELL POLICE DEPARTMENT

\*\*\*\*\*

JUDGMENT RENDERED: DECEMBER 21, 2007

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ON APPEAL FROM THE  
TWENTY-SECOND JUDICIAL DISTRICT COURT  
DOCKET NUMBER 2006-11527, DIVISION D  
PARISH OF ST. TAMMANY, STATE OF LOUISIANA

HONORABLE PETER J. GARCIA, JUDGE

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CHARLES RODGERS  
ANGOLA, LA

PLAINTIFF/APPELLANT IN PROPER PERSON

SLIDELL POLICE DEPARTMENT  
SLIDELL POLICE CHIEF,  
FREDDIE DRENNAN  
SLIDELL, LA

DEFENDANTS/APPELLEES  
PRO SE

BEFORE: GAIDRY, MCDONALD AND MCCLENDON, JJ.

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**MCDONALD, J.**

This is a suit for mandamus, injunctive or declaratory relief. The plaintiff, Charles Rodgers, filed an application for writ of mandamus, injunctive or declaratory relief, naming as defendants Slidell Police Chief Freddie Drennan and the Slidell Police Department. Mr. Rodgers asserted that on December 29, 2005, he requested a copy of a transcribed statement taken from his co-defendant, Brian Johnson, from the defendants. The Slidell Police Department responded to his request by informing him that, by law or policy, it was not allowed to provide a copy of the report requested. On February 7, 2006, he made another request for a copy of Mr. Johnson's statement. The Slidell Police Department responded that it was unable to provide a copy of the report requested.

Mr. Rodgers asserted that he was seeking a civil action under La. R.S. 44:35 and requested that the trial court issue a writ of mandamus, including injunctive and declaratory relief, along with attorney's fees and litigation costs as provided by La. R.S. 44:35, or in the alternative, that the matter be set for a contradictory hearing. The district court denied his request in its entirety.

Mr. Rodgers then applied for a writ of mandamus with this court. This court denied the writ and remanded the case to the district court with instructions to grant Mr. Rodgers an appeal, and ordered Mr. Rodgers to submit an order for appeal to the district court within 30 days of this court's order.

On appeal, Mr. Rodgers argues that the district court erred in denying the request for mandamus, injunctive or declaratory relief, erred in denying the application without holding a hearing, and erred in denying him the right to pay for reproduction of a public record at his own expense.

## THE APPLICABLE LAW

Louisiana Revised Statutes 44:31 provides:

A. Providing access to public records is a responsibility and duty of the appointive or elective office of a custodian and his employees.

B. (1) Except as otherwise provided in this Chapter or as otherwise specifically provided by law, and in accordance with the provisions of this Chapter, any person of the age of majority may inspect, copy, or reproduce any public record.

(2) Except as otherwise provided in this Chapter or as otherwise specifically provided by law, and in accordance with the provisions of this Chapter, any person may obtain a copy or reproduction of any public record.

(3) The burden of proving that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian.

Louisiana Revised Statutes 44:35 provides, in part:

A. Any person who has been denied the right to inspect or copy a record under the provisions of this Chapter, either by a final determination of the custodian or by the passage of five days, exclusive of Saturdays, Sundays, and legal public holidays, from the date of his request without receiving a final determination in writing by the custodian, may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney's fees, costs and damages as provided for by this Section, in the district court for the parish in which the office of the custodian is located.

B. In any suit filed under Subsection A above, the court has jurisdiction to enjoin the custodian from withholding records or to issue a writ of mandamus ordering the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the custodian to sustain his action. The court may view the documents in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

Louisiana Revised Statutes 44:31.1 provides:

For the purposes of this Chapter, person does not include an individual in custody after sentence following a felony conviction who has exhausted his appellate remedies when the request for public records is not limited to grounds upon which the individual could file for post conviction relief under Code of Criminal Procedure Article 930.3. Notwithstanding the

provisions contained in R.S. 44:32, the custodian may make an inquiry of any individual who applies for a public record to determine if such individual is in custody after sentence following a felony conviction who has exhausted his appellate remedies and the custodian may make any inquiry necessary to determine if the request of any such individual in custody for a felony conviction is limited to grounds upon which such individual may file for post conviction relief under Code of Criminal Procedure Article 930.3.

Louisiana Code of Civil Procedure article 3865 provides:

Upon the filing of a petition for a writ of mandamus, the court shall order the issuance of an alternative writ directing the defendant to perform the act demanded or to show cause to the contrary.

### ANALYSIS

As cited above, Louisiana Revised Statutes 44:31.1 excludes from the definition of person certain inmates who have exhausted their appellate remedies for their felony convictions. Such an inmate's access to public records is restricted, in that the inmate's request is limited to grounds upon which the inmate may file for certain categories of post-conviction relief. See State ex rel. Leonard v. State, 96-1889 (La. 6/13/97), 695 So.2d 1325.

Further, some records held by district attorneys, sheriffs and police departments are specifically excluded from classification as public records. These include: (1) records pertaining to pending or anticipated criminal litigation, until such litigation has been finally adjudicated or otherwise settled; (2) records containing the identity of a confidential source or which would endanger such a source; (3) records containing security procedures, investigative techniques or training aids; (4) records of the arrest of a person until a final judgment of conviction or the acceptance of a plea of guilty; (5) records containing the identity of or tending to identify an undercover police officer; (6) records concerning status offenders as defined in the Code of Juvenile Procedure; and (7) records containing the identity of a subject of a

public health disease investigation. La. R.S. 44:3(A); **Cormier v. Public Records Request of Di Giulio**, 553 So.2d 806 (La. 1989). The public records statute requires more than a judicial acceptance of an assertion of privilege by the prosecutor; there must be an opportunity for cross examination and presentation of evidence to contradict the claim of privilege. La. R.S. 44:3(C); **Cormier**, 553 So.2d at 807.

The record herein does not indicate the reason Mr. Rodgers' record request was denied by the Slidell Police Department. However, a mandamus action for production of a public record requires a contradictory hearing. See **Revere v. Layrisson**, 593 So.2d 397, 399 (La. App. 1st Cir. 1991).

We find that the district court committed legal error in failing to set the mandamus request for a contradictory hearing, and we remand the case to the district court so that it may set a contradictory hearing. We assess costs against the defendants. This opinion is rendered in compliance with the Uniform Rules – Louisiana Courts of Appeal, Rule 2-16.1.B.

**REVERSED AND REMANDED FOR CONTRADICTORY HEARING.**