IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 16-2020-CA-006482-XXXX-MA

CURTIS LEE, an individual,

Plaintiff,

v.

OFFICE OF THE STATE ATTORNEY, FOURTH JUDICIAL CIRCUIT OF FLORIDA,

Defendant.
_____/

ORDER AND FINAL JUDGMENT AWARDING ATTORNEYS' FEES AND COSTS TO DEFENDANT

This matter came before the Court on Defendant's Motion for Attorneys' Fees and Costs, filed October 14, 2022. Having considered the Motion, Plaintiff's Pre-Hearing Brief in Opposition to Defendant's Motion for Attorneys' Fees, the evidence presented at the hearings held on May 23, 2022, and July 21, 2022, and the additional evidence and argument presented at the hearing on the Motion held on August 27, 2024, the Court makes the following findings of fact and conclusions of law:

Procedural History

The operative Amended Complaint, filed on May 10, 2021, contained four counts: one count alleging violations of the Florida Public Records Act ("PRA") (Count II) and three counts asserting that Defendant Office of the State Attorney, Fourth Judicial Circuit of Florida ("SAO") had violated Plaintiff Curtis Lee's rights

by failing to ensure that assistant state attorneys spoke into microphones audibly during court proceedings (Counts I, III, and IV). Count II asserted that the SAO had violated the PRA by untimely responding to a June 3, 2019, request for records relating to a (nonexistent) investigation of a particular judge that Mr. Lee had sought. (Am. Compl. ¶¶ 110-16); by producing records containing acronyms (*id.* ¶¶ 117-22); and by charging "arbitrary and capricious" rates when the SAO responded to his past public records requests (*id.* ¶ 145). After the SAO served a motion for sanctions under Section 57.105, Florida Statutes, Mr. Lee voluntarily dismissed Counts I, III, and IV with prejudice. The case then proceeded on Count II, Mr. Lee's claim under the PRA.

At a bench trial held on May 23, 2022, and July 21, 2022, the Court received evidence on Count II. On September 16, 2022, the Court entered a Final Judgment for Defendant, finding that Mr. Lee had failed to prove a violation of the PRA.

As set forth in the Final Judgment, the SAO responded and informed Mr. Lee that there were no responsive records to his June 3, 2019, public records request because there was no investigation of the judge. The SAO sent this response just three days after Mr. Lee sent a follow-up letter and more than one year before Mr. Lee instituted this lawsuit. (Final Judgment, pp. 4-5.) In addition to finding that the SAO had "fully and timely responded" to the request, the Court concluded that the fact that there were no responsive records was itself fatal to Mr. Lee's claim based on the June 3, 2019, request. (I*d.* at 5, 9.)

Concerning the acronym claim, the Court concluded that the SAO had no obligation to refrain from using acronyms. (*Id.* at 10.) The Court also found that Mr. Lee failed to "allege, much less prove, that documents pertaining to acronyms and their definitions exist or that the SAO improperly refused to provide him with these documents." (*Id.*) The Court further found that the SAO had created a list of definitions of acronyms specifically for Mr. Lee, even though it had no legal obligation to do so. (*Id.* at 9.) The SAO had also offered to create a more comprehensive list defining all acronyms used by its employees. However, Mr. Lee declined to pay the estimated charge to create such a list. (*Id.* at 9-10.)

With respect to the request related to hourly rates charged by the SAO, the Court found that Mr. Lee failed to prove that the SAO withheld records responsive to his request. (*Id.* at 7, 9.) The Court found that although Mr. Lee's request was "indisputably vague," the SAO had "attempt[ed] to understand and fulfill" the request. (*Id.* at 7-8.) In addition to repeatedly seeking clarification and providing all responsive records, the SAO "explained to Plaintiff multiple times the bases for the charges." (*Id.* at 6-7.) Eventually, Mr. Lee told the SAO that it had "provided [him] much information" and that he "may get back to [the SAO] later if [he] need[ed] more etc." (*Id.* at 7 (alterations in original) (quoting Def.'s Ex. 2 at 1).) Instead, Mr. Lee filed a lawsuit asserting that the SAO had failed to satisfy the request. (*Id.*)

On October 14, 2022, the SAO timely filed its Motion for Attorneys' Fees and Costs, which is currently before the Court. The Motion seeks to recover fees and costs under Section 119.12(3), Florida Statutes.

On October 17, 2023, the Fifth District Court of Appeal affirmed this Court's Final Judgment for Defendant. On October 23, 2023, the District Court entered an order provisionally granting the SAO's motion for appellate attorneys' fees and "remand[ing] to the trial court for its determination of entitlement to and the amount of fees, if any, to which [the SAO] may be entitled pursuant to Section 119.12(3), Florida Statutes."

On July 16, 2024, the SAO filed a Notice of Withdrawal of Motion to Award Sanctions. The Notice withdrew Defendant's Motion to Award Sanctions, which had sought attorneys' fees under Section 57.105, Florida Statutes. That Notice did not affect the SAO's October 14, 2022, Motion for Attorneys' Fees and Costs.

The SAO's Entitlement to Attorneys' Fees and Costs

In a lawsuit brought under the PRA, Section 119.12(3), Florida Statutes, requires the court to award the defendant's reasonable attorneys' fees if the plaintiff "requested to inspect or copy a public record or participated in the civil action for an improper purpose." Section 119.12(3), Florida Statutes. That statute provides in part:

> The court shall determine whether the complainant requested to inspect or copy a public record or participated in the civil action for an improper purpose. If the court determines there was an improper purpose, the court . . . shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action.

Id. Section 119.12(3), Florida Statutes, defines "improper purpose" as "a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of this chapter or for a frivolous purpose." (*Id.*) Although there

is evidence that Mr. Lee submitted public records requests to the SAO primarily to cause a violation of the PRA[1], the "frivolous purpose" prong of the definition is more pertinent here.

Given the absence of case law interpreting Section 119.12(3), Florida Statutes, precedent interpreting similar language in another statute is instructive. Florida's Administrative Procedure Act authorizes an award of sanctions if a paper is filed in an administrative proceeding "for any improper purposes, such as to harass or to cause unnecessary delay or *for frivolous purpose* or needless increase in the cost of litigation." Section 120.57(1)(b)5., Florida Statutes (1990) (now numbered § 120.569(2)(e)) (emphasis added). A "frivolous purpose," as used in that provision, has been construed to mean "one which is of little significance or importance in the context of the goal of" the proceedings. *Mercedes Lighting & Elec. Supply, Inc. v. State Dep't of Gen. Servs.*, 560 So. 2d 272, 278 (Fla. 1st DCA 1990). The First District Court of Appeal held that, in determining whether there was a frivolous purpose, "courts should not delve into an attorney's or party's subjective intent or into a good faith-bad faith analysis." (*Id.*) The question, instead, is an objective one: whether "a reasonably clear legal justification can be shown for the filing of the paper in question." (*Id.*)

[1] The Court found in the Final Judgment for Defendant that Mr. Lee's June 3, 2019 request was on page three of a letter concerning other subjects that was sent to multiple public officials. (Final Judgment, p. 4.) Other evidence exists that Mr. Lee submitted public records requests primarily to cause a violation of the PRA. For example, Mr. Lee "was aware that the SAO had an email address that was designated to receive all public records requests" but declined to submit the requests to that email address. (*Id.*)

Under this objective standard, the SAO proved that Mr. Lee participated in this action for a frivolous purpose and, therefore, for an improper purpose as defined in Section 119.12(3) Florida Statutes. The Court previously found that Mr. Lee harbored "animus for the SAO and its employees that apparently arose from Plaintiff's admitted feeling of having been mistreated by them." (Final Judgment, p. 2.) The evidence presented at the hearing on Defendant's Motion for Attorneys' Fees and Costs further confirmed that finding. (*See, e.g.*, Tr. 219:25-220:1 (Mr. Lee: "You were not nice people."); Tr. 219:19-21 (comparing the SAO to the Soviet Union); *see also* Pl.'s Ex. 21; Pl.'s Ex. 22.) At least one other trial court interpreting Section 119.12(3), Florida Statutes, has found that animus is enough. *See Vitale v. Palmetto Charter Sch., Inc.*, No. 2021-CA-4310, at 10 (Fla. 12th Jud. Cir. Ct. Manatee Cnty. May 18, 2022) ("[The plaintiff's] personal animosity toward his son's school because of the way he believed it treated he [sic] and his wife and his belief that the school personnel 'targeted' his son is the definition of 'a frivolous purpose'.").[2]

Blinded by his animus, Mr. Lee filed this lawsuit despite it lacking "a reasonably clear legal justification." *Mercedes Lighting*, 560 So. 2d at 278. Indeed, by the time that Mr. Lee filed this lawsuit, the SAO had fully complied with his public records requests. The SAO went well beyond its obligations under

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[2] Mr. Lee contends that because the Legislature declined to adopt a version of Section 119.12(3), Florida Statutes, that would have expressly listed harassment in the definition of "improper purpose," the statute cannot be construed to recognize harassment as an improper purpose. (Pl.'s Pre-Hearing Br. 12-13.) In fact, it was simply unnecessary to list harassment alongside "frivolous purpose" in the definition. The term "frivolous purpose" already encompasses harassment. As the *Vitale* court aptly observed, "personal animosity . . . is the definition of 'a frivolous purpose'." *Vitale*, No. 2021-CA-4310, at 10.

the PRA, creating and offering to create new documents defining acronyms for Mr. Lee, and explaining at length its policies regarding charges for responding to public records requests. (Final Judgment, pp. 6-10.) The SAO demonstrated its willingness to provide any public records Mr. Lee requested through its repeated efforts to obtain clarification of his requests. (*Id.*) Incredibly, the Amended Complaint did not even seek relief requiring the SAO to produce any records. This lawsuit was not a vehicle to obtain public records, and Mr. Lee simply had no basis for believing the SAO had violated the PRA.[3]

Indeed, before he filed this lawsuit, after voluntarily dismissing a previous lawsuit asserting similar claims, the SAO again advised Mr. Lee that it remained willing to provide any public records he sought without litigation. Stephen Siegel, the SAO's First Assistant State Attorney, testified that the SAO's position was that "as long as it understood what [Mr. Lee] was asking for," it would "provide [the records] to him." (Tr. 34:20-35:2.) The SAO's counsel communicated that position to Mr. Lee in writing on at least three occasions before Mr. Lee filed this lawsuit.

First, on August 14, 2020, the SAO's counsel wrote to Mr. Lee's counsel: "The SAO will continue to fulfill Mr. Lee's public records requests in a timely manner. If he has concerns, we ask that you promptly share them with us so that we can work cooperatively to resolve his concerns without the need for litigation." (Def.'s Ex. 9.) Second, on September 22, 2020, the SAO's counsel

[3] Mr. Lee's attorney, Brooks Rathet, acknowledged in his testimony that when he filed the operative Amended Complaint, he "couldn't identify specific documents that the state attorney had refused to produce." (Tr. 163:11-18.)

wrote to Mr. Lee's counsel: "**If there are outstanding requests, please let us know what they are, and the SAO will satisfy them expeditiously without the need for a lawsuit.**" (Def.'s Ex. 11 (bold in original).) Third, on October 21, 2020, the SAO's counsel sent another letter to Mr. Lee's counsel, reiterating the SAO's previous offers of cooperation and carefully explaining why the SAO believed it had fully responded to Mr. Lee's requests. (Def.'s Ex. 12.) Mr. Lee's attorney, Brooks Rathet, testified that he shared those letters with Mr. Lee. (Tr. 167:25-168:4.)

Mr. Siegel testified that the SAO was sincere in offering to remedy any potential deficiencies in its responses to Mr. Lee's requests. (Tr. 45:4-5.) Mr. Lee presented no credible evidence that he had any legitimate reason to doubt the SAO's sincerity. Mr. Lee's unsupported assertion in his testimony that "you [i.e., the SAO] were not expeditious" (Tr. 219:7-11) is far outweighed by the detailed evidence of the SAO's actual conduct presented at the hearings on May 23, 2022, July 21, 2022, and August 27, 2024. That evidence, as described in Final Judgment for Defendant, shows that the SAO worked cooperatively and patiently with Mr. Lee to satisfy his requests and, in doing so, went beyond its obligations under the PRA. (Final Judgment, pp. 6-10.) If Mr. Lee's true goal was to obtain public records, he simply had to make a clear request to the SAO. No reasonable person would have resorted to a lawsuit under these circumstances.

Mr. Lee's expert, Ted Bridis, testified that it is not "unusual for a public records requester to suspect that additional documents may exist even after receiving a response that there are no responsive records." (Tr. 234:9-13.) Mr.

Bridis also testified that "people who are in the requester community, journalists, activists, public interest groups, we are naturally, inherently suspicious." (Tr. 237:2-5.) A general suspicion of the government however, is not a sufficient basis for filing a lawsuit against the governmental entity. As Mr. Bridis acknowledged, to bring a lawsuit, a plaintiff must have a "good-faith belief, that the documents exist." (Tr. 237:13-25.) Here, Mr. Lee lacked any basis for a good faith belief that the SAO was withholding additional records responsive to his requests.

At the hearing on the SAO's Motion, Mr. Lee relied on a July 27, 2018, email from Miriam Nelson to State Attorney Melissa Nelson (Pl.'s Ex. 1) to contend that this lawsuit presented a legitimate issue about whether the SAO's production of that document was improperly delayed. (Tr. 137:16-138:18.) But as the Court previously found, that record was not responsive to any of the requests at issue in this action. (Final Judgment, p. 8.) Instead, it was produced in response to a separate public records request not at issue in this lawsuit. (Tr. 168:10-20.) The existence of a *nonresponsive* record, does not show that Mr. Lee had a good faith basis for believing the SAO had withheld *responsive* records at the time he filed the lawsuit. Further, the SAO's production of that *nonresponsive* record in response to a separate public records request by Mr. Lee confirms the sincerity of the SAO's pre-suit assurances to Mr. Lee that to obtain any public record he wanted, all Mr. Lee had to do was ask for the record.

Mr. Lee contends that his offer of a "complete walk-away settlement" nearly one year after he filed the lawsuit and after he had "lost interest in this matter" shows he did not participate in the lawsuit for an improper purpose. (Pl.'s Pre-

Hearing Br. 19; Tr. 207:5.) This is simply not so. Again, it is telling that Mr. Lee did not request, as part of his proposed walk-away settlement, that the SAO produce any documents. (Tr. 158:10-14) The offer did nothing to create a reasonably clear legal justification for this lawsuit. Further, nothing prevented Mr. Lee from unilaterally dismissing his lawsuit. Mr. Lee had previously unilaterally dismissed a similar lawsuit against the SAO, and he clearly knew how to do so. But rather than dropping his frivolous PRA claims that he had admittedly "lost interest in," Mr. Lee battled on through a two-day bench trial, a motion to reconsider the Final Judgment for Defendant, and then through the appellate process.

Mr. Lee argues that the SAO's withdrawal of its Motion to Award Sanctions pursuant to Section 57.105, Florida Statutes, somehow effected a withdrawal of the SAO's contention that Mr. Lee participated in this lawsuit for a frivolous purpose under Section 119.12(3), Florida Statutes. However, the SAO's Notice of Withdrawal refers explicitly to the July 2021 motion seeking fees under Section 57.105, Florida Statutes; it says nothing about the SAO's separate motion under Section 119.12(3), Florida Statutes.

Section 57.105, Florida Statutes, which is not involved in the instant Motion, provides that a "represented party" may not be sanctioned for asserting a claim that the party or his attorney knew or should have known "[w]ould not be supported by the application of then-existing law to th[e] material facts." § 57.105(1)(b), (3)(c), Florida Statutes. Mr. Lee contends that a similar limitation should be grafted onto Section 119.12(3), Florida Statutes, and that a

represented plaintiff cannot be sanctioned under that provision for taking a frivolous legal position. The plain language of Section 119.12(3), Florida Statutes, permits no such interpretation. The Legislature could have included such a limitation in Section 119.12(3), Florida Statutes, but it did not do so. This Court may not rewrite the statute to include such a limitation. (*See, e.g.*, *Coates v. R.J. Reynolds Tobacco Co.*, 365 So. 3d 353, 354 (Fla. 2023) ("[W]e apply the supremacy-of-the-text principle, recognizing that '[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.'" (second alteration in original) (quoting *Levy v. Levy*, 326 So. 3d 678, 681 (Fla. 2021))).[4]

Mr. Lee additionally argued that Section 119.12(3), Florida Statutes, applies only to a narrow class of cases involving "bad actors" who "used the PRA as a money-making mill," "filing hundreds or thousands of public records lawsuits over short periods of time." (Pl.'s Pre-Hearing Br. 7.) Under the "supremacy-of-the-text principle," the Court must apply the statute as written rather than rewriting it in a way that, in Mr. Lee's opinion, would better serve the Legislature's intent. *See, e.g.*, *State v. Crose*, 378 So. 3d 1217, 1234 (Fla. 2d DCA 2024) ("[T]he supreme court's marching orders for interpreting legislation have been clear: to derive the meaning of statutes, we are to look to the text itself, as understood in its context, *not to any purported intent underlying the text.*" (emphasis added)). The text of Section 119.12(3), Florida Statutes, understood

[4] Nor is the Court permitted to rewrite the statute to allow Mr. Lee's liability for attorneys' fees to be reduced or eliminated on the basis of financial hardship, as Mr. Lee's counsel suggested at the hearing. (Tr. 210:2-11.)

in its context, is not limited to the use of the PRA as a "money-making mill" (Pl.'s Pre-Hearing Br. 7); instead, it encompasses Mr. Lee's conduct in filing and pursuing this litigation.

The Court finds that Mr. Lee participated in this lawsuit for an improper purpose. Specifically, Mr. Lee filed and prosecuted this action for a frivolous purpose—"one which is of little significance or importance in the context of the goal of" the proceedings. *Mercedes Lighting*, 560 So. 2d at 278. No reasonable person would have filed a lawsuit under the PRA that did not seek to obtain any public records, challenged the use of common acronyms, and challenged charges that were years old and less than what could have been charged. That conclusion is all the more inescapable given the SAO's continued professional handling of Mr. Lee's repeated records requests.

Mr. Lee contends that awarding attorneys' fees to the SAO would chill citizens exercising their rights under the PRA. (Pl.'s Pre-Hearing Br. 2.) The Court disagrees. This is an extraordinary case in that the SAO repeatedly offered to provide Mr. Lee with any public record he wanted without litigation, and Mr. Lee chose to sue anyway. No reasonable person would have filed suit against the SAO, while it was engaged in a dialogue with Mr. Lee to make sense of his confusing records requests in order to comply with them. Requiring Mr. Lee to pay a portion of the fees he caused to be incurred after he rejected the SAO's pre-suit efforts is consistent with the PRA's aim of encouraging parties to resolve their differences without litigation. (*See* § 119.12(1)(b), Florida Statutes, (making a complainant's recovery of attorneys' fees contingent on the complainant

providing written notice of a deficient request at least five business days before filing the civil action)). The SAO is entitled to recover its reasonable attorneys' fees and costs under Section 119.12(3), Florida Statutes.

The Amount of Reasonable Attorneys' Fees and Costs

The Court received into evidence a series of invoices representing attorneys' fees charged to the SAO by its counsel in this action. (Def.'s Exs. 7, 8.) The SAO also presented demonstrative exhibits summarizing the fees and costs it seeks to recover. The SAO's lead attorney, Michael Lockamy, testified that he reviewed the time entries in preparing those summaries and excluded time related to the microphone claims or the Motion to Award Sanctions under Section 57.105, Florida Statutes. (Tr. 70:23-71:22, 72:7-18.)

The SAO's counsel charged reduced hourly rates for this engagement. (Tr. 66:21-67:1) The parties have stipulated that the hourly rates charged are reasonable. (Tr. 105:18-21.)

In determining the reasonableness of the time expended, the Court has considered the factors outlined in Rule 4-1.5 of the Rules Regulating the Florida Bar. The Court has considered Mr. Lockamy's testimony that the SAO's counsel attempted to avoid duplication and to assign tasks to timekeepers with lower hourly rates when possible. (Tr. 67:15-23.) The Court also considered the testimony of the SAO's expert, Geddes Anderson, that the SAO's counsel performed the work efficiently. (Tr. 109:5-11.)

During his testimony, Mr. Lockamy acknowledged that certain charges were incorrectly included in the amount of fees requested. (Tr. 77:20-78:6,

79:12-25, 80:19-23, 84:3-10, 86:16-87:6.) The reductions acknowledged to be appropriate by Mr. Lockamy total $3,221.

The Court agrees with Mr. Anderson's testimony that the hours for which the SAO seeks to recover attorneys' fees and the total amount of fees sought, subject to the reductions acknowledged by Mr. Lockamy, are reasonable. (Tr. 110:16-24.) Indeed, given the length of this litigation, the fees are shockingly low. Accordingly, the Court finds that the SAO reasonably incurred attorneys' fees in the amount of $125,478.25 in defending this lawsuit and that the SAO is entitled to recover that amount from Mr. Lee.[5]

In addition, the Court finds that the SAO is entitled to recover the following costs: expert witness fees for Geddes Anderson of $7,055.00 (Tr. 102:21-103:5; Def.'s Ex. 13) and $1,772.15 in court reporters' charges for hearing transcripts. The SAO's recoverable costs thus total $8,827.15. Accordingly,

IT IS ORDERED AND ADJUDGED that:

1. Defendant's Motion for Attorneys' Fees and Costs, filed on October 14, 2022, is GRANTED.

2. Defendant Office of the State Attorney, Fourth Judicial Circuit of Florida, 311 West Monroe Street, Jacksonville, Florida 32202, shall recover from Plaintiff Curtis Lee, 7537 Teaticket Court, Jacksonville, Florida 32244, the sum

[5] Mr. Lee contends that the SAO cannot recover attorneys' fees incurred in litigating his Motion for Protective Order, filed March 22, 2024, on which, according to Mr. Lee, the SAO did not prevail. Mr. Lee cites no authority that supports that proposition. Section 119.12(3), Florida Statutes, authorizes recovery of "the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action"; it makes no exception for fees incurred in responding to specific motions on which the agency did not prevail.

of $134,305.40, which shall bear interest at the statutory rate, for which let execution issue.

3. The judgment debtor shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on the judgment creditor's attorney or the judgment creditor if the judgment creditor is not represented by an attorney, within 45 days from the date of this Final Judgment, unless the Final Judgment is satisfied or post-judgment discovery is stayed.

4. Jurisdiction of this case is retained to enter further orders that are proper to compel the judgment debtor to complete form 1.977, including all required attachments, and serve it on the judgment creditor's attorney, or the judgment creditor if the judgment creditor is not represented by an attorney.

DONE AND ORDERED in Volusia County, Florida, on the 18th day of June, 2025.

Honorable Kathryn D. Weston
Circuit Judge

Copies furnished to parties by e-service