

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. ____

DIVISION ____

SECTION: ____

LAURA BIXBY

VERSUS

COLLIN ARNOLD

FILED: _____

DEPUTY CLERK

PETITION FOR WRIT OF MANDAMUS
PURSUANT TO THE LOUISIANA PUBLIC RECORDS LAW

NOW INTO COURT, through undersigned counsel, comes petitioner Laura Bixby, who requests, pursuant to Article XII, Section 3 of the Louisiana Constitution of 1974, La. R.S. 44:31 *et seq.*, and other applicable law cited herein, that this Court issue a Writ of Mandamus directing City of New Orleans (the “City”) employee Collin Arnold, in his official capacity as records custodian for the New Orleans Department of Homeland Security and Emergency Preparedness (“NOHSEP”) to provide Petitioner with public records in the City’s possession. In addition, Petitioner seeks penalties for violation of the State public records law.

In support of this Petition, Petitioner states the following:

I. INTRODUCTION

1. This is a case brought under Louisiana’s Public Record Law (“PRL”) about the City’s failure to provide public records of the locations of more than 400 publicly-visible cameras, operated by the City and funded by taxpayers, to a public defender who properly sought these records.

2. In 2017, the City unveiled a \$40 million Citywide Public Safety Improvement Plan. This plan enhanced lighting throughout the city, refigured traffic patterns in pedestrian-heavy areas, and modified alcohol licensing requirements. It also funded the expansion of a video surveillance network and the construction of the 24/7 Real-Time Crime Center (“RTCC”) at 517 N. Rampart Street.

3. NOHSEP operates the RTCC, which receives footage from more than 400 publicly owned cameras placed in public locations throughout the city and about 120 private cameras not at issue in this lawsuit. The RTCC cameras surveil neighborhoods across New Orleans, from New Orleans East, to Hollygrove, to Algiers. They constantly observe and monitor the behavior, activities, and locations of the City’s populace. The RTCC cameras are powerful, capable of panning, zooming, and tracking a particular person, location, object, or incident. These cameras can observe public and private spaces alike. On information and belief, NOHSEP possesses a map or other records of the locations of the RTCC cameras, as it is the entity in charge of operating and managing the RTCC.

4. All of the cameras are conspicuous to the public. With the exception of cameras located in the French Quarter, all of them are outfitted with bright blue and red lights that either flash or “steady burn,” drawing attention to their locations. All of them bear official insignia of the City.

5. The locations of the City’s cameras are not secret, and they are not intended to be. In a recent public meeting, RTCC Administrator Ross Bourgeois affirmed that there are “no covert cameras.” During the January 30, 2019 meeting held at the RTCC, Mr. Bourgeois told community representatives, “Everything is overt.”

6. The RTCC provides real-time information to support a variety of City agencies, including the fire department, public works, EMS and the police. RTCC operators relay street flooding information to public works employees, traffic information to emergency vehicles en route, information about storm-related hazards, on-scene information to police officers responding to calls for service. They also support administrative quality of life investigations. Terrorism prevention is not mentioned on the websites of either NOHSEP or the RTCC. Because the proffered purpose of the cameras is to be reactive, rather than proactive, it is unclear how they

could assist in terrorism prevention in any event. Ostensibly, camera operators are only responding to calls for service, not generally and actively surveilling the public.

II. PARTIES

7. Petitioner Laura Bixby is a resident of New Orleans and a staff attorney for the Orleans Public Defenders. Her employer provides representation to poor people who cannot afford to hire a criminal attorney. The location of the City cameras impacts the quality of representation public defenders can provide to people accused of crimes in New Orleans.

8. NOHSEP is a department within the City, supervised by the Chief Administrative Officer and distinct from other departments expressly created by the City's Charter, such as the police department. It is a "public body" as defined by the PRL. La. R. S. 44:1(A)(1).

9. Defendant Collin Arnold is the director of NOHSEP. As such, Mr. Arnold is the records custodian for NOHSEP. La. R. S. 44:1(A)(3).

III. STATEMENT OF FACTS

10. On August 9, 2018, Ms. Bixby made the following public records request to NOHSHEP:

I am requesting:

- 1) Any map or maps which the City maintains showing the location of all PUBLICLY VISIBLE (in other words, red and blue lights and the NOPD logo) real time crime cameras, not including traffic/red light/school zone cameras, at the present date;
- 2) Any policies governing the keeping of records of locations of such cameras of past dates; and
- 3) Records or policies regarding the number and type of staff employed at the Real Time Crime Center.

11. On August 14, 2018, the New Orleans City Attorney's Office responded on behalf of Mr. Arnold and NOHSEP by denying the first and second requests, but providing records responsive to the third request. In response to the first request, it issued the following denial:

Records responsive to your first request regarding the location of the City's crime cameras are exempt from disclosure under the Public Records Law because they are records regarding investigative technical equipment and physical security information created in the prevention of terrorist-related activity. . . .

In response to the second request, the City Attorney stated, “The Office of Homeland Security and Emergency Preparedness does not have records responsive to your second request regarding policies governing keeping records of locations of cameras.”

12. Footage from RTCC cameras is routinely used in the prosecution of crimes in the city. In her role as a public defender, Ms. Bixby obtained video footage that demonstrates the cameras’ capabilities. In the video, the camera panned toward a group of men on a street corner and zoomed in from several hundred feet away. Within minutes of the camera focusing on the group of men, several New Orleans police officers arrived on the scene and arrested a man who would later become a client of the Orleans Public Defenders.

13. Ms. Bixby seeks a map of the RTCC cameras in her role as a public defender. A map of the cameras is necessary to provide her clients an effective and constitutional level of defense. RTCC cameras are as capable of capturing exonerating evidence as they are capable of capturing incriminating evidence. Alibis and misidentifications can be proven as readily as identifications and implications. As a matter of fairness and balance in the criminal justice system, RTCC footage should be as accessible to the defense as it is to law enforcement and prosecutors.

14. Ms. Bixby also believes that the residents of New Orleans have a basic right to know where the RTCC cameras are located. These cameras are powerful tools of government surveillance and may monitor places where people have legitimate expectations of privacy, like enclosed yards, patios, or interior rooms visible through windows.

IV. STATEMENT OF LAW

15. The public’s right of access to public records is a fundamental right, guaranteed by the Constitution. *Title Research Corp. v. Rausch*, 450 So. 2d 933, 936 (La. 1984) (citing La. Const. art. 12, § 3, which must be “construed liberally in favor of free and unrestricted access to the records”). Access can be denied “only when a law, specifically and unequivocally, provides otherwise.” *Id.* “Whenever there is doubt as to whether the public has the right of access to certain records, the doubt must be resolved in favor of the public’s right to see.” *Id.*

16. A writ of mandamus “may be directed to a public officer to compel the performance of a ministerial duty required by law,” La. C.C.P. art. 3863. This writ is appropriate to compel Defendant to abide by his statutory duty to produce the records requested by Petitioner.

17. Suits filed under the PRL “shall be tried by preference and in a summary manner.” La. R.S. 44:35(C).

18. The burden of proving “that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian.” La. R.S. 44:31(B)(3).

V. CLAIM

19. Defendant’s response to Petitioner’s request violates the PRL. Mr. Arnold does not claim that the requested map does not exist, nor does he claim that the map is out of the custody or control of NOHSEP. The Defendant refused to provide a map, citing exceptions to the PRL that are inapplicable to Ms. Bixby’s request. Such denial is arbitrary and capricious.

20. The Defendant has no interest, compelling or otherwise, in keeping secret the locations of cameras that are not only publicly visible, but overt, conspicuous, and readily evident.

21. The Defendant has an obligation to produce a map or make it available for inspection. Rather than comply with Petitioner’s request or attempt to comply, the Defendant has obfuscated the existence and/or location of the records sought.

VI. RELIEF REQUESTED

WHEREFORE, Petitioner prays:

1. That a writ of mandamus be issued directing the Defendant to disclose the records requested or show cause why Defendant should not be ordered to do so, and
2. For an award of attorneys’ fees, damages, sanctions, and costs as provided by law, including, specifically, penalties for intentional, unreasonable, and arbitrary denial of a valid public records request pursuant to La. R.S. 44:35(E) and 44:37.

Respectfully submitted,

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Co-Counsel for Laura Bixby

Sheriff please serve:

Collin Arnold
In His Capacity as Records Custodian, Office of Homeland Security and Emergency
Preparedness
1300 Perdido Street
New Orleans, Louisiana 70112

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STATE OF LOUISIANA

NO. _____ DIVISION _____ SECTION: _____

LAURA BIXBY

VERSUS

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DEPUTY CLERK

ORDER

Considering the foregoing Petition for Writ of Mandamus filed herein by the Petitioner, Laura Bixby;

IT IS HEREBY ORDERED that the Defendant, Collin Arnold, in his official capacity as custodian of record for The Office of Homeland Security and Emergency Preparedness, be served with the foregoing Petition and a copy of this Order, and that an alternative writ of mandamus shall issue herewith, directing and compelling the Defendant to immediately produce the public record requested, or show cause to the contrary.

IT IS FURTHER ORDERED that a hearing shall be held on the _____ day of _____, 2019, at _____ o'clock ____m., and the Defendant shall show cause as to:

- Why said record should not be produced as requested, and why the alternative writ of mandamus issued by this Order shall not be made peremptory and permanent;
- Why Defendant should not be taxed with costs and attorneys' fees, as well as penalties for an arbitrary and capricious failure to comply with the law, and all other equitable and just relief as may be permitted by law.

New Orleans, Louisiana, this _____ day of _____, 2019.

JUDGE

PLEASE SERVE:

Collin Arnold

In His Capacity as Records Custodian, Office of Homeland Security and Emergency
Preparedness
1300 Perdido Street
New Orleans, Louisiana 70112