IN THE

SUPREME COURT

STATE OF LOUISIANA

NO.

ALANAH ODOMS
Plaintiff-Petitioner

versus

CHAVEZ CAMMON
Defendant-Respondent

CIVIL PROCEEDING

ORIGINAL APPLICATION OF
PETITIONER ALANAH ODOMS FOR WRIT OF CERTIORARI

From the ruling of the Louisiana First Circuit Court of Appeal, No. 2021-CA-0828, on appeal from the Nineteenth Judicial District Court, Parish of East Baton Rouge, Section Twenty-Three, Civil Case No. C-704564, the Honorable Judge William A. Morvant, Presiding

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SUPREME COURT OF LOUISIANA
WRIT APPLICATION FILING SHEET

NO._____

TO BE COMPLETED BY COUNSEL or PRO SE LITIGANT FILING APPLICATION

TITLE

Alanah Odoms
VS.
Chavez Cammon

Applicant: Alanah Odoms
Have there been any other filings in this Court in this matter? ☐ Yes ☒ No

Are you seeking a Stay Order? No
Priority Treatment? No
If so you MUST complete & attach a Priority Form

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Pleading being filed: ☐ In proper person, ☐ In Forma Pauperis

Attach a list of additional counsel/pro se litigants, their addresses, phone numbers and the parties they represent.

TYPE OF PLEADING

☒ Civil, ☐ Criminal, ☐ R.S. 46:1844 protection, ☐ Bar, ☐ Civil Juvenile, ☐ Criminal Juvenile, ☐ Other
☐ CINC, ☐ Termination, ☐ Surrender, ☐ Adoption, ☐ Child Custody

ADMINISTRATIVE OR MUNICIPAL COURT INFORMATION

Tribunal/Court:_____ Docket No._____
Judge/Commissioner/Hearing Officer:_____ Ruling Date:_____

DISTRICT COURT INFORMATION

Parish and Judicial District Court: Parish of East Baton Rouge, 19th JDC Docket Number: C-704564
Judge and Section: Hon. Judge William A. Morvant Date of Ruling/Judgment: March 23, 2021

APPELLATE COURT INFORMATION

Circuit: First Docket No. 2021-CA-0828 Action: Denied
Applicant in Appellate Court: Alanah Odoms Filing Date: May 26, 2021
Ruling Date: 03/03/2022 Panel of Judges: Guidry, Holdridge, Chutz En Banc: ☐

REHEARING INFORMATION

Applicant:_____ Date Filed:_____ Action on Rehearing:_____
Ruling Date:_____ Panel of Judges:_____ En Banc: ☐

PRESENT STATUS

☐ Pre-Trial, Hearing/Trial Scheduled date:_____, ☐ Trial in Progress, ☒ Post Trial
Is there a stay now in effect? No Has this pleading been filed simultaneously in any other court? No
If so, explain briefly_____
_____.

VERIFICATION

I certify that the above information and all of the information contained in this application is true and correct to the best of my knowledge and that all relevant pleadings and rulings, as required by Supreme Court Rule X, are attached to this filing. I further certify that a copy of this application has been mailed or delivered to the appropriate court of appeal (if required), to the respondent judge in the case of a remedial writ, and to all other counsel and unrepresented parties.

04/01/2022
DATE

Megan Snider
SIGNATURE

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STATEMENT OF WRIT CONSIDERATIONS

4. Erroneous Interpretation or Application of Constitution or Laws. *A court of appeal has erroneously interpreted or applied the constitution or a law of this state or the United States and the decision will cause material injustice or significantly affect the public interest.*

This matter concerns the interpretation of the Louisiana Public Records Act (LPRA)—*i.e.*, the right of access to records afforded to the public by the Louisiana Constitution. La. Const. art. 12, § 3. Here, the court of appeal erroneously interpreted the LPRA in two ways:

First, Ms. Odoms issued a public record request (PRR) to Louisiana State Police (LSP) seeking "all documents referencing facial recognition software…". At the hearing, an LSP representative testified as to the existence of records responsive to this request. Yet, the trial court and court of appeal found that no responsive records existed. This finding could only be arrived at by requiring a requestor to specify search terms and phrases in a PRR, without which the requestor will be precluded from accessing responsive records. This requirement is found nowhere in the Louisiana Constitution, the LPRA, or caselaw. To leave the court of appeal ruling undisturbed is to undermine the public's fundamental, constitutional right to public records by mandating that the requestor predetermine the very wording that would be revealed by access to the very records sought. Therefore, this ruling should be reviewed under ground four, Erroneous Interpretation or Application of Constitution or Laws.

Second, the court of appeal failed to review the trial court's erroneous interpretation of an exception to producing public records found in La. R.S. 44:3(A)(3)— *i.e.*, records "containing . . . investigative training information or aids." The trial court expanded the scope of La. R.S. 44:3(A)(3) beyond its statutory language to block the production of records responsive to Ms. Odoms' PRR. To leave the court of appeal ruling, which failed to consider this erroneous lower court decision, undisturbed is to undermine the public's fundamental, constitutional right to public records by judicially broadening the statutory exception to the LPRA found in La. R.S. 44:3(A)(3). Under the undisturbed trial court's ruling, all LSP records that reference facial recognition and training related thereto are excepted from disclosure. Imbuing La. R.S. 44:3(A)(3) with an overly broad interpretation signals to all government entities that the judiciary ratifies the withholding of public records, even where the records are not specifically and unequivocally excepted from production. Therefore, this ruling should be reviewed under ground four, Erroneous Interpretation or Application of Constitution or Laws.

MEMORANDUM

A. STATEMENT OF THE CASE

LSP Denies Ms. Odoms' Public Records Request

Ms. Odoms submitted a public records request (PRR) to Louisiana State Police (LSP) on September 4, 2019, the relevant portions of which are reproduced below:

> "For purpose of this request, the term 'documents' includes, but is not limited to, any memoranda, letters, electronic mail or e-mail, handwritten, typed, or electronic notes, recordings of any kind and in any form (video, audio, digital, etc.). . . .
>
> 1. All documents referencing facial recognition software currently being used by the Louisiana State Police including its "Fusion" center,[1] including but not limited to meeting agendas, meeting minutes, public notice, communications between your office and elected leaders, and analyses.
>
> 2. All documents referencing training conducted by the security company IDEMIA[2] and provided to the Louisiana State Police, including but not limited to e-mails, calendar invitations, and memoranda."[3]

Hereinafter, Ms. Odoms refers to numeral one of her PRR as "Request 1" and numeral two as "Request 2."

Ms. Odoms' request was denied on September 27, 2019, citing to the exemption found in La. R.S. 44:3(A)(3):

> ". . . your public records request is denied as the type of information you seek pertains to investigative techniques, investigative technical equipment or instructions on its use, and investigative training information or aids"[4]

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[1] The Louisiana State Analytical & Fusion Exchange ("LA-SAFE" or"Fusion Center") is part of the Investigative Support Section of LSP. According to the LSP's Fusion Center website, "A Fusion center is defined as a 'collaborative effort of two or more agencies that provide resources, expertise, and information to the center with the goal of maximizing their ability to detect, prevent, investigate, and respond to criminal and terrorist activity.'" http://la-safe.org/. The Fusion Center is "basically the state's version of" a Central Intelligence Agency. WAFB Staff, Louisiana fusion center to be model for others in US, WAFB (May 14, 2012), available at: https://www.wafb.com/story/18393920/br-fusion-center-to-be-model-for-others-in-us/.

[2] IDEMIA is a global biometric services platform company. According to the Department of Homeland Security, biometrics are unique physical characteristics, such as fingerprints, that can be used for automated recognition. https://www.dhs.gov/biometrics. IDEMIA provides facial recognition to LSP's Fusion Center and provided a training to LSP on the use of the facial recognition software it offers. Ms. Odoms learned of the name IDEMIA and the fact that it provides facial recognition and had provided a training on facial recognition to LSP through testimony by an LSP officer in a criminal proceeding. *See* R. 64:17-65:11.

[3] R. 90.

[4] *Id.*

Ms. Odoms replied to LSP on October 2, 2019, reiterating her request and seeking clarification from LSP as to its response.[5] LSP responded on December 13, 2019.[6] LSP's letter stated, in relevant part, as follows:

> ". . . [LSP] asserts that any facial recognition software is investigative technical equipment covered by the exception found in La. R.S. 44:3(A)(3). The nature of the documents you seek referencing any facial recognition software and training are also covered by the exemption found in La. R.S. 44:3(A)(3)."[7]

Dissatisfied with LSP's response, Ms. Odoms filed a Petition for Writ of Mandamus pursuant to the LPRA on February 8, 2021. Pursuant to La. R.S. 44:1 *et seq*., she named Chavez Cammon in his official capacity as LSP Captain and custodian of records. The Petition prayed for the Writ to issue and for an award of attorneys' fees, costs, damages, and penalties as provided by law.

At the Mandamus Hearing, LSP Testifies to the Existence of Records Responsive to Request 1

The matter was heard on March 23, 2021. At the hearing, Capt. Robert Hodges—Captain and Custodian of the Investigative Support Section of LSP, which houses the Fusion Center and uses facial recognition—testified.[8] Capt. Hodges' testified that LSP had been using facial recognition software since 2018.[9] Remarkably, his testimony confirmed the existence of the very records Ms. Odoms sought in Request 1: (1) the existence of a user request form for local law enforcement agencies to request the use of facial recognition software from LSP;[10] and (2) emails from local law enforcement agencies requesting use of LSP's facial recognition software.[11]

First, Capt. Hodges testified that LSP maintains a user request form that allows other law

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[5] R. 96-97. Ms. Odoms' reply explained that LSP's response only addressed whether LA-SAFE possessed responsive records – not whether LSP, the agency to whom her request was directed, possessed responsive records. Her reply also asked for clarification as to the scope of the exemption being claimed by LSP. Finally, the reply explained that "documents which reference the software or training—but do not otherwise contain exempted information—are subject to the public records law and should be produced" and stated, "we believe records exist that may be redacted for production or inspection."

[6] R. 99.

[7] *Id.*

[8] R. 192:5-22.

[9] R. 205:1-2; R. 206:15-18; *see also* R. 205:7-11 (stating the Capt. Hodges "searched from January of 2018 to present for IDEMIA training"). Capt. Hodges testified that, at the time of Ms. Odoms' PRR— September 4, 2019—the Fusion Center had been using facial recognition for almost two years: "IDEMIA is the company who provides that software. An additional tool that they provide is the facial recognition, which we started using in 2018 after we received the training by IDEMIA." R. 206:15-18. He testified that the IDEMIA training was conducted "sometime in early 2018." R. 205:1-2; R. 196:14-20; *see also*, R. 196:10-18. (Capt. Hodges states that he searched for "[t]raining related to IDEMIA, Morphotrak software" and when asked "Did you look for references to facial recognition software by itself", answered "[w]e only use that one type of software.").

[10] R. 200:25-29.

[11] R. 199: 8-15, Exhibit "B"; *see also* R. 201:16-27.

enforcement agencies to request use of LSP's facial recognition software: "The Fusion Center has a user request form that's required to complete [sic] by the requesting law enforcement agency. One of the options is facial recognition."[12]

Second, Capt. Hodges testified that other law enforcement agencies have, in fact, emailed LSP to request the use of facial recognition software:

> "Q: And when [other local law enforcement, federal agencies] make those requests to Louisiana State Police, their emails generally reference that software; do they not?
>
> A: They specifically – there's a lot of things they can request. Sometimes it's facial recognition."[13]

Capt. Hodges also testified, "Yes, other law enforcement agencies request to use – request facial recognition from the Fusion Center."[14]

Despite its blanket written denial that it need not search for any records responsive to Request 2 based on the exception found in La. R.S. 44:3(A)(3),[15] LSP, through Capt. Hodges, testified that it searched for these records.[16]

At bottom, the testimony presented before the trial court confirmed the existence of records directly responsive to Request 1, which stated: "documents," including "e-mail," "referencing facial recognition software currently being used by the Louisiana State Police."[17]

The Trial Court Denies Ms. Odoms' Writ of Mandamus Petition

The trial court denied Ms. Odoms' Writ in its entirety.[18] The court arrived at this conclusion by imposing requirements that find no basis in the Louisiana Public Records Act (LPRA).

Faced with Capt. Hodges' testimony confirming that LSP's Fusion Center had been using facial recognition since early 2018,[19] the existence of a facial recognition user request form,[20] and emails attesting to correspondence about the software with local law enforcement agencies,[21] the trial court

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[12] R. 200:25-29.
[13] R. 199:8-15, Exhibit "B".
[14] R. 201:16-27
[15] R. 93-94, R. 99.
[16] R. 193:7-15; *see also,* R. 205:7-11.
[17] R. 90.
[18] R. 208:22-209:21, Exhibit "C".
[19] R. 205:1-2; R. 206:15-18.
[20] R. 200:25-29.
[21] R. 199: 8-15, Exhibit "B".

nonetheless ruled that no records existed that were responsive to Request 1.[22] The trial court held that because Request 1 was too broad—in that it failed to specify the term "IDEMIA" (a reference to the facial recognition software provider)—any records pertaining to use of that software fell outside the ambit of Ms. Odoms' requested production.[23]At the same time, the court held that Request 1 was too specific in that its use of the phrase "facial recognition software" precluded production of records that do not use that exact phrase.[24] The court stated that if "Bunkie Police Department says, 'we want to run this picture through facial recognition,' that in and of itself would not be responsive to the request referencing facial recognition software."[25]

Further, the trial court ruled that no records responsive to Request 2 existed,[26] and that, in any event, the exception invoked by LSP under La. R.S. 44:3(A)(3) applied to preclude disclosure of *all* the records requested.[27]

The Legislature Unequivocally Rejected Expanding La. R.S. 44:3(A) to Include All LSP Fusion Center Records

The month after the trial court's ruling, the Louisiana State Legislature took up the question of whether there should be a statutory exception to disclosure of <u>*all*</u> "[r]ecords collected and maintained by the Fusion Center." The answer was a resounding "no." Specifically, on May 4, 2021, the Committee on House and Governmental Affairs considered and failed to advance House Bill No. 185 by Representative Charles Owen (HB 185). That Bill would have added the following language to La. R.S. 44:3(A): "(9) Records collected and maintained by the Louisiana State Analytical and Fusion Exchange," thus including such records to the list of those that do not require disclosure.[28] Notably, the Committee Chairman found the proposed exception too broad. Rep. Stefanski (R., District 42), Chairman of

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[22] R. 208:22 – 32, Exhibit "C" (stating "[t]here was nothing responsive to that request"; R. 209:15-19 (stating "I'm satisfied, based on what I have heard, that there are no documents that are maintained by state police specific to the requests that were made").
[23] R. 203:20 – R. 204:23, Exhibit "A".
[24] R. 199:26 – R. 200:21, Exhibit "B".
[25] R. 200:1-5; *see also*, R. 203:3-6, Exhibit "A" (stating "[Ms. Odoms] is saying that, 'Well, if there was a request to run a photo through facial recognition, why wasn't that produced?' Because that's not responsive to the request that was made").
[26] R. 208:32—209:3, Exhibit "C" (stating "Captain Hodges said, 'we've got none.'"); R. 209:15-19, Exhibit "C" (stating "I'm satisfied, based on what I have heard, that there are no documents that are maintained by state police specific to the requests that were made").
[27] *Id.* (stating "I do think that the training, if there were documents conducted, falls under [La. R.S. 44:3(A)(3)], investigative training information or aids. And I think that the software, if there were—if it goes beyond the software and it goes to the actual tool, that's investigative training; again, techniques, equipment And I think that if they had something responsive to those, it would fall under the exclusion of [La. R.S. 44:3(A)(3)]).
[28] 2021 Regular Session of the Louisiana State Legislature, HB 185 Original Text, available at http://www.legis.la.gov/legis/ViewDocument.aspx?d=1206069; see also, May 4, 2021 House and Governmental Affairs hearing, beginning at 2:58:02, available at https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2021/may/0504_21_HG.

Committee on House and Governmental Affairs, stated: ". . . I tend to agree that this is . . . a little broad," and expressed concern that the Bill could be "misused to cover a lot of different things."[29]

The Appellate Court Affirms the Trial Court's Denial of Ms. Odoms' Writ of Mandamus Petition

Ms. Odoms filed her Motion for Devolutive Appeal on May 26, 2021.[30] On March 3, 2022, contrary to binding precedent, statutory interpretation, and legislative intent, the appellate court affirmed the trial court's holding.[31] In reaching its conclusion, the appellate court concluded that no records responsive to Ms. Odoms' request existed.[32] As such, it declined to review the trial court's holding that any responsive records would be exempt from disclosure under La. R.S. 44:3(A)(3).[33]

B. ASSIGNMENT OF ERROR(S)

1. The appellate court erred in upholding the trial court's creation of requirements not found in the statutory language of the LPRA to block the production of records responsive to Ms. Odoms' PRR.
2. The appellate court erred in failing to reject the trial court's expansion of the scope of La. R.S. 44:3(A)(3) beyond its statutory language to block the production of records responsive to Ms. Odoms' PRR.

C. SUMMARY OF THE ARGUMENT

There are two reasons the appellate court's ruling should not stand: *First*, the LPRA does not require that responsive records must use the exact phraseology of the PRR. In mandating that requirement here—one unsupported by statute or case law—the appellate court precluded production of the very records Ms. Odoms sought.[34] By affirming the trial court's determination that LSP maintains no documents responsive to Ms. Odoms' public records request, the appellate court confirmed that because Ms. Odoms' request used the term "facial recognition software," as opposed to simply "facial recognition," records that failed to include the term "software" were not responsive to her request.[35] This requirement, however, stands at odds with the minimal records request parameters articulated by

[29] May 4, 2021 House and Governmental Affairs hearing at 3:13.
[30] R. 167-173.
[31] *Odoms v. Cammon*, 2021-0828, p. 8 (La. App. 1 Cir. 3/3/22); 2021 CA 0828, 2022 WL 620773, at *4 (La. Ct. App. Mar. 3, 2022), Exhibit E.
[32] *Id.* at *8.
[33] *Id.*
[34] *Id.*
[35] *Id.*

Hatcher v. Rouse—which unremarkably holds that a records request need do nothing more than identify the records sought. 2016-0666 (La. App. 4 Cir. 2/1/17); 211 So. 3d 431, 437. The appellate court's mandate also fails under *Nungesser v. Brown*, which simply holds that, where requestors specify a desired format in which they would like a record produced, the record need not be produced if it does not exist in the format specified. 95-1039 (La. App. 1 Cir. 10/6/95); 664 So. 2d 132, 133, writ granted, judgment rev'd, 95-3005 (La. 2/16/96), 667 So. 2d 1036.

Here, Request 1 asked for "[a]ll documents referencing facial recognition software currently being used by the Louisiana State Police, including its 'Fusion' center, including but not limited to meeting agendas, meeting minutes, public notice, communications between your office and elected leaders, and analyses."[36] In framing her request in this way, Ms. Odoms clearly identified the records being sought without placing any limitation on their format. The request accordingly complied with *Hatcher* and stood far outside the bounds articulated by *Nungesser*. In denying Ms. Odoms access to the records sought, the appellate court perpetuated an erroneous application of the LPRA which should be reviewed by this Court.

Second, the statutory exception to the LPRA found in 44:3(A)(3) is not a blanket prohibition on disclosure of *all* LSP records that reference facial recognition and training on its use. The plain language of the statute says as much. Significantly, it does not "specifically and unequivocally" restrict access to *all* LSP and Fusion Center records referencing facial recognition software and training. In fact, the Louisiana State Legislature recently considered whether it should broaden La. R.S. 44:3(A)(3) to memorialize such an expansive exception—in doing so, the Legislature both conceded that the law in its current form was not so broad and that it should not be. The appellate court thus erred by failing to overturn the trial court's holding that ignored the plain language of the statute in favor of a blanket ban on access to public records.[37]

[36] R. 90-91.
[37] *Odoms*, 2022 WL 620773, at *4, Exhibit "E" (emphasis added).

D. ARGUMENT

1. The appellate court erred in upholding the trial court's creation of requirements not found in the statutory language of the LPRA to block the production of records responsive to Ms. Odoms' PRR.

The appellate court's confirmation that no responsive documents existed demonstrates an erroneous interpretation of the LPRA to require responsive records to include the exact phraseology used to describe the requested records. Such a requirement has no basis in the LPRA or in case law. This incorrect interpretation of the law should be reviewed by this Court, as this decision, if allowed to stand, will create obstacles to the public's fundamental right to access records that are not provided for by law.[38]

a) The LPRA Does Not Require Requests to Specify Search Terms.

Request 1 asked for records "referencing facial recognition software."[39] Such records existed.[40] However, the appellate court concluded that no such records existed based on Captain Hodges' testimony that he searched for Idemia and Morphotrack software and "all documents relating to *facial recognition software* and no documents were identified."[41] In so concluding, the appellate court affirmed the trial court's holding that Ms. Odoms' request was too specific, and thus by virtue of its phraseology eliminated documents that simply included references to "facial recognition."[42] This ruling was in error as neither the LPRA nor case law support the notion that the phraseology appearing in a records request must also appear in the body of the records sought in order for those records to be responsive.

The LPRA does not mandate the use of specific terminology or phraseology. Rather, access to public records is a fundamental, constitutional right: "No person shall be denied the right to . . . examine public documents, except in cases established by law." La. Const. art. 12, § 3.[43] Contrary to what the

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[38] *See* La. R.S. 44.1 *et seq.*
[39] R. 90.
[40] R. 200:25-29; R. 199: 8-15, Exhibit "B"; *see also* R. 201:16-27.
[41] *Odoms*, 2022 WL 620773, at *4, Exhibit "E".
[42] *See id.*; R. 199:26–R. 200:21, Exhibit "B" ("[If] Bunkie Police Department says, 'we want to run this picture through facial recognition,' that in and of itself would not be responsive to the request referencing facial recognition software."); *see also* R. 203:3-6, Exhibit "A" ("[Ms. Odoms] is saying that, 'Well, if there was a request to run a photo through facial recognition, why wasn't that produced?' Because that's not responsive to the request that was made.").
[43] *See Title Research Corp. v. Rausch*, 450 So. 2d 933, 936 (La. 1984) ("The right of the public to have access to the public records is a fundamental right and is guaranteed by the constitution. La. Const. art. 12, § 3. The provision of the constitution must be construed liberally in favor of free and unrestricted access to the records, and that access can be denied only when a law, specifically and unequivocally, provides otherwise. 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. To allow otherwise would be an improper and arbitrary restriction on the public's constitutional rights.") (internal citations omitted).

appellate court's holding would demand, requirements pertaining to the exercise of this constitutional right are few.[44] In fact, the law is silent as to the language requestors must use in making their requests. Where the case law has weighed in on the adequacy of particular requests, it has done nothing more than establish the floor and ceiling for such requests. Request 1 was well above that floor and below that ceiling.

The decision in *Hatcher v. Rouse* clarifies the minimum standard required to request records—the request must make the records identifiable to the custodian of records. 2016-0666 (La. App. 4 Cir. 2/1/17); 211 So. 3d 431, 437. In other words, the custodian needs to be able to glean from reading the request what documents and information a requestor is seeking.

In *Hatcher*, the Fourth Circuit held that the custodian of public records cannot produce records they are unable to identify. *Id.* at 437. There, the plaintiff requested from the coroner's office all records it possessed "in relationship to the above captioned item" and referenced an item number: "H3007087." *Id.* at 435. The custodian's response explained that "that type of number does not correlate to any files maintained by the Coroner." *Id.* The custodian actively sought to better understand the request by seeking more specific details about the records from the requestor, but the requestor did not provide additional information. *Id.* at 435, 437. With no additional information provided, the custodian had no alternative other than to confirm his initial conclusion that no such records existed, after which the plaintiff filed a mandamus petition. *Id.* at 437. In finding that the custodian met his duty, the court explained that, because the custodian was unable to identify the records the plaintiff sought, he could not produce them. *Id.*

Here, Request 1 rises well above the floor outlined in *Hatcher*. As an initial matter, it clearly identified the subject matter of the records sought—namely, "[a]ll documents referencing facial recognition software currently being used by [LSP], including its "Fusion" center."[45] Additionally, by naming "the 'Fusion' center," the request provided further context to assist the records custodian in his search. In contrast to *Hatcher*, where the records custodian could not identify any records sought without

[44] Except as otherwise provided, any person of the age of majority may inspect, copy, or reproduce any public record. La. R.S. 44:31. The custodian shall present any public record to any person of the age of majority who so requests and make no inquiry of any person who applies for a public record, except an inquiry as to the age and identification of the person. La. R.S. 44:32. If available, the public record shall be immediately presented to the authorized person applying for it. La. R.S. 44:33. Additionally, the LPRA allows requests for records to be made in-person or in writing. La. R.S. 44:35.

[45] R. 90-91.

more information, here, the request was readily understood. Testimony from Capt. Hodges established that IDEMIA is the *only* software used by LSP for facial recognition.[46] Thus, he did not need to be supplied with the term "IDEMIA" to identify records relating to facial recognition.[47] To impose such a requirement is to mandate that the requestor predetermine the very wording that would be revealed by access to the records sought. Such a result does not comport with the LPRA's protection of the public's right of access to public records. The ruling that no responsive records exist in response to Request 1 because it failed to include the term "IDEMIA" should be reversed.

b) The LPRA Does Not Require Responsive Records to Include the Exact Phraseology Used to Describe the Requested Records.

While *Hatcher* establishes the floor—*i.e.*, at a minimum, a public records request must identify the records sought—*Nungesser v. Brown* establishes the ceiling. In *Nungesser*, the Louisiana Supreme Court held that, where the records request was for a "list" that did not exist, the custodian was not required to produce it. 95–3005 (La. 2/16/96); 667 So.2d 1036, 1037.

In *Nungesser*, the plaintiff requested production of a "list" of certain cash investments on estates. 95-1039 (La. App. 1 Cir. 10/6/95); 664 So. 2d 132, 133, writ granted, judgment rev'd, 95- 3005 (La. 2/16/96); 667 So. 2d 1036. The custodian responded that no records "listing" the information requested by the plaintiff existed. *Id.* The plaintiff filed a mandamus petition, and the trial court ordered production of the "list." *Id.* at 133. On appeal, the First Circuit affirmed the trial court's ruling, underscoring that production of multiple existing records containing the information the requestor sought satisfied the request. *Id.* at 135. In reversing the judgment, the Supreme Court explained in a succinct, 52- word opinion that the plaintiff requested a list and that list, to put it simply, did not exist. 95–3005 (La. 2/16/96); 667 So. 2d 1036, 1037. Because the list did not exist, the custodian was not required to produce it. *Id.*[48]

Here, Ms. Odoms' request does not fall within the narrow *Nungesser* paradigm. Instead of

[46] R. 196:14-20 (reading "Q. Did you look for references to facial recognition software by itself? A. We *only* use that one type of software." (emphasis supplied)).

[47] *See Odoms*, 2022 WL 620773, at *4, Exhibit "E". ("The record reveals that Captain Hodges searched for Idemia and Morphotrack.").

[48] *See, e.g., Williams L. Firm v. Bd. of Sup'rs of Louisiana State Univ.*, 2003-0079 (La. App. 1 Cir. 4/2/04); 878 So. 2d 557, 563 and *Cox v. Bello*, 2014-0759 (La. App. 1 Cir. 12/23/14) (citing *Nungesser v. Brown*, 95–3005 (La.2/16/96); 667 So.2d 1036, 1037) ("The 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."); *Lewis v. Morrell*, 2016-1055 (La. App. 4 Cir. 4/5/17); 215 So. 3d 737, 743 (citing *Nungesser v. Brown*, 95–3005 (La. 2/16/96); 667 So.2d 1036, 1037); Jack M. Weiss and Mary Ellen Roy, OPEN GOVERNMENT GUIDE: OPEN RECORDS AND MEETINGS LAWS IN LOUISIANA, 16 (6th ed. 2011) ("Courts have refused to impose a duty on public bodies to 'create' documents not already in existence.") (internal citations omitted).

prescribing the format of the records sought, Ms. Odoms' request was inclusive. She clarified that by "documents" she meant: "*including but not limited to* meeting agendas, meeting minutes, public notice, communications between your office and elected leaders, and analyses," and "*including but not limited to* e-mails, calendar invitations, and memoranda" (emphasis added).[49] She also used the terms "all documents" and "referencing"—*i.e.*, "[a]ll documents referencing facial recognition software currently being used by [LSP], including its 'Fusion' center."[50] Had she intended to restrict disclosure to her verbatim description of the records, she would have placed those terms or phrases in quotation marks. In *Nungesser*, the Supreme Court took issue only with the *format* of the records sought—not their *description*. Accordingly, the dictates of *Nungesser* are inapplicable here, where the description of the records sought was not overly prescriptive as to their exact format.

In this instance, restricting responsive documents to only those that use the exact phrase "facial recognition software"[51] resulted in blocking production of records Capt. Hodges testified were clearly responsive—such as a user request form, in which "one of the options is facial recognition."[52] Neither the LRPA nor case law hold that records produced to a requestor will only include the very terms or phrases articulated in the request submitted. Yet, the appellate court's holding imposes such a requirement to deny that records with the term "facial recognition" would be responsive to Ms. Odoms' request.[53] The ruling is an erroneous interpretation of the LPRA that hinders public access to public records and constitutes reversible error.

2. The appellate court erred in failing to reject the trial court's expansion of the scope of La. R.S. 44:3(A)(3) beyond its statutory language to block the production of records responsive to Ms. Odoms' PRR.

The appellate court erroneously interpreted the LPRA when it failed to overturn the trial court's ruling that La. R.S. 44:3(A)(3) precludes disclosure of *all* records sought in Requests 1 and 2.[54] This

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[49] R. 90-91.
[50] *Id.*
[51] *Id.*
[52] R. 200:25-29. Capt. Hodges also testified to the fact that the Fusion Center has been using facial recognition since early 2018 and the fact that the Fusion Center receives e-mails from other law enforcement agencies requesting the use of facial recognition software. *See* R. 205:1-2; 206:15-18; R. 199: 8-15, Exhibit "B"; *see also* R. 201:16-27.
[53] *See Odoms*, 2022 WL 620773, at *4, Exhibit "E".
[54] *Id.* Regarding Request 2 of Ms. Odoms' PRR, pre-litigation, LSP did not represent whether such documents existed; rather, LSP responded that any such documents were exempt from production based on La. R.S. 44:2(A)(3). R. 93- 94, R. 99. At the hearing, Capt. Hodges testified that he conducted a search for records referencing training. R. 193:7-15; *see also* R. 205:7-11. The trial court ruled that "there are no documents that are maintained by State Police specific to the requests that were made" and that if there was something responsive it would "fall under the exclusion" of La. R.S. 44:3(A)(3). R. 209:13-20, Exhibit "C". It is unknown to Ms. Odoms whether records responsive to Request 2 do, in fact, exist. Accordingly, her argument addresses the

ruling is far too expansive as the statutory language itself is very limited.

La. R.S. 44:3(A)(3) states:

> A. Nothing in this Chapter shall be construed to require disclosures of records, or the information contained therein, held by the offices of . . . police departments, . . . which records are: . . .
>
> (3) Records *containing* security procedures, *investigative training information or aids, investigative techniques, investigative technical equipment* or instructions on the use thereof, ... (emphasis added).

In doing so, the appellate court misinterpreted the plain language of the LPRA and ignored legislative intent. If allowed to stand, this decision will judicially broaden an exception to the public's fundamental right to access records beyond the statutory language.[55] This incorrect interpretation of the law should be reviewed by this Court.

a) The Appellate Court's Ruling Misinterprets the Exception to Production under the LPRA.

The First Circuit previously considered the breadth of a similar statutory exception in *Times Picayune Publication Corp. v. Board of Supervisors of Louisiana State University*. 2002-2551 (La. App. 1 Cir. 5/9/03); 845 So. 2d 599. In *Times Picayune*, a newspaper requested copies of a legal settlement entered into by the State University's School of Dentistry pursuant to the LPRA. *Id.* at 602. The newspaper sued after the State invoked the "pending claims" exception detailed in La. R.S. 44:4(15). *Id*. The Court sided with the newspaper—holding that the State's settlement records were subject to production as they were not "pending claims" within the meaning of the exception invoked, even where there was ongoing litigation on related claims. *Id.* at 608.

In finding that the "pending claims" exception did not apply to block the newspaper's access to the settlement, the Court explained that, in order for an exception to public records to be invoked, a law must *specifically and unequivocally* provide for that exception. *Id.* at 609 (emphasis added). The court also explained that "the relevant statutory provisions [of the LPRA] are to be interpreted liberally in favor of providing public access, while *exceptions to that access are to be narrowly construed*." *Id.* at 608 (emphasis added).[56] Citing to the LPRA, the court stated that the burden of proving that a public

application of the claimed exception to Request 2 of her PRR.

[55] *See* La. R.S. 44:3.

[56] *See also Bixby v. Arnold* 2019-0477 (La. App. 4 Cir. 12/5/19); 287 So. 3d 43, 49 ("Not all records of the entities enumerated in La. R.S. 44:3(A) are exempt. Only the records *containing* specific information, as defined in La. R.S. 44:3(A)(3), are

record is not subject to inspection, copying or reproduction shall rest with the custodian. *Id.* at 605-06.[57] Further, the court clarified that the mere fact that the record requested may contain nonpublic material is not a valid reason for restricting access to that record. *Id.* (citing *Elliott v. District Attorney of Baton Rouge*, 94–1804, p. 7 (La. App. 1 Cir. 9/14/95); 664 So.2d 122, 126). Rather, when a record contains material that is not public, the custodian may separate the nonpublic record and make only the public record available. *Id.* at 606 (citing La. R.S. 44:32(B)).

In reaching its conclusion, the court considered two relevant factors. *First*, the Court considered the statutory language. Because the statute did not define the term "pending claims," the court interpreted the meaning of the term using common and approved usage of the language pursuant to La. R.S. 1:3,[58] Black's Law Dictionary, and Louisiana Supreme Court precedent. *Id.* Further, the court referred to audio-recording of legislative proceedings, which demonstrated that the intent by the legislature was to prevent disclosure of records from claims that had not settled, been dismissed, or finally adjudicated. *Id.* at 607.

Second, the Court rejected the State's argument that its own policy was to designate records as "pending claims" where related claims were ongoing. The Court explained that this internal practice did not prevent disclosure where the Legislature had not vested such authority in the State: "allowing the [State] to escape disclosure by designating or labeling a claim file pending, even though the claim is no longer subject to judicial scrutiny, would defeat the very purpose of the [LPRA]." *Id.* at 608. "Should the legislature intend for the [state] to have greater discretion in "designating" or "labeling" a file as pending . . . then the legislature must specifically so provide." *Id.* at 609. The court also rejected the State's argument that disclosure of the settlement would hamper its ability to reach settlements in related claims. "[S]uch a potentiality cannot negate the public's fundamental right of access. . . . We are instructed to find in favor of disclosure whenever there is any doubt as to the interpretation of a statute." *Id.*

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exempt." (emphasis added)). *See id.* (citing *Skamangas v. Stockton*, 37,996 (La. App. 2 Cir. 3/5/04), 867 So. 2d 1009, 1014 ("The privileges granted under La. R.S. 44:3(A) have been strictly construed."); *see also Revere v. Layrisson*, 593 So. 2d 397 (La. App. 1 Cir.1991) (stating that whether a law enforcement agency record is subject to disclosure must be determined on a case-by-case basis).

[57] *See* La. R.S. 44:31(B)(3); *see also Krielow v. Louisiana State Univ. Bd. of Supervisors*, 2019-0176 (La. App. 1 Cir. 11/15/15); 290 So. 3d 1194, 1203 (explaining that the burden of proof to justify any restriction or limitation on the public's right to access a public record is on the custodian).

[58] La. R.S. 1:3 states "Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the language. Technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning. The word "shall" is mandatory and the word "may" is permissive."

Thus, the Court, relying on the statutory language and legislative intent, rejected the State's argument that policy concerns dictated a broadening of the exception.[59] *See id.* at 610. Because the settlement records did not fit within the *specific and unequivocal* language of the statutory exception and because exceptions to public records are to be interpreted narrowly, the court refused to restrict public access to them. *Id.*[60]

b) The Appellate Court's Ruling Runs Counter to the Plain Language of the LPRA.

The plain language of the LPRA exception found in La. R.S. 44:3(A)(3) makes clear that the appellate court accepted an overly broad interpretation of the statute. In *Times Picayune*, the statutory language of "pending claims" did not "specifically and unequivocally exempt" settlement records from production. So too here, where the statutory language of La. R.S. 44:3(A)(3) does not "specifically and unequivocally exempt" *all* "documents referencing facial recognition" software and training from production. The fact is, "only the records *containing* specific information, as defined in La. R.S. 44:3(A)(3), are exempt." *Bixby v. Arnold*, 2019- 0477 (La. App. 4 Cir. 12/5/19); 287 So. 3d 43, 49 (emphasis added).

Ms. Odoms requested records "referencing"—not records "containing"— facial recognition software or related training.[61] La. R.S. 44:1, *et seq.* does not define "contain," nor does Black's Law Dictionary. "Contain" means "to have within."[62] By contrast, "reference," when used as a verb, as it is in Ms. Odoms' requests, is defined as "to mention (something or someone) in speech or in writing."[63] The statute exempts from production records "*containing* . . . investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof." La. R.S.

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[59] Other courts have similarly declined to judicially broaden the narrowly construed statutory exceptions to the LPRA. *See Boren v. Taylor*, 2016-2078 (La. 6/29/17); 223 So. 3d 1130 (holding that "an individual in custody after sentence following a felony conviction" in La. R.S. 44:31.1 does not apply to an attorney representing an incarcerated felon in a PRR to obtain information relative to a potential post-conviction relief application); *Landis v. Moreau*, 2000- 1157 (La. 2/21/01); 779 So. 2d 691 (holding that while La. R.S. 44:3(A)(1) exempted from disclosure records relating to pending or anticipated criminal litigation, such exemption was temporary and ended when litigation was finally adjudicated or otherwise settled such that discovery in post-conviction proceedings of audiotapes of witnesses interviewed during investigation of a case was not precluded); *Fryar v. Guste*, 371 So. 2d 742 (La. 1979) (finding that "confidential informants" in La. R.S. 44:3(A)(2)(B) requires a promise of confidentiality of one's *identity* and does not include those persons to whom the investigator merely assured confidentiality of the *information* they provided; as such, access to interviews conducted in an investigation were not exempt from public access); *Bixby v. Arnold*, 2019-0477 (La. App. 4 Cir. 12/5/19); 287 So. 3d 43 (finding that New Orleans Department of Homeland Security and Emergency Preparedness was not an intelligence agency within the meaning of La. R.S. 44:3 such that records of locations of its public cameras were not exempt from disclosure).

[60] Further the court instructed that, according to La. R.S. 44:32, any nonpublic material could be separated from the public material, and access granted only to the public records. *Times Picayune Publ'n Corp. v. Bd. of Supervisors of La. State Univ.*, 2002-2551 (La. App. 1 Cir. 5/9/03); 845 So. 2d 599, 609-10.

[61] R. 90-91.

[62] https://www.merriam-webster.com/dictionary/contain.

[63] https://www.merriam-webster.com/dictionary/reference.

44:3(A)(3) (emphasis added). In other words, the statute exempts records that have *within them* the specified items. It does not, however, preclude production of documents that *reference*, or mention, such items. Said differently, a document that refers to a machine does not contain that machine; records *referencing* "software" do not *contain* the software itself. Similarly, records *referencing* "training" do not necessarily *contain* the training. Therefore, the statutory language of La. R.S. 44:3(A)(3) does not "specifically and unequivocally deny access" to the records requested by Ms. Odoms,[64] especially when the exception is construed narrowly in favor of public access.

Additionally, as in *Times Picayune*, where the court narrowly construed the exception for "pending claims", here, the Court should also narrowly construe the exception in La. R.S. 44:3(A)(3). If there is doubt, it must be resolved in favor of the public's right to access the record. *Times Picayune*, 845 So.2d at 605 (citing *Title Research Corp. v. Rausch*, 450 So.2d 933, 936 (La. 1984)).

Even assuming, *arguendo*, that with respect to Request 1, facial recognition software is "investigative technical equipment," the statutory language does not preclude disclosure of records that *refer* to its existence. For example, LSP might rely on the exception to refuse to produce the coding and programming by IDEMIA that make up its software.[65] However, LSP should not be able to rely on the exception to withhold an e-mail that refers to facial recognition in the subject line or body. Indeed, NOPD did not interpret the LPRA in this fashion when it disclosed this very email.[66] Similarly, if, *arguendo*, facial recognition software is an "investigative technique" or "investigative technical equipment," LSP might not produce an instruction or user manual published by IDEMIA as "instructions on the use."[67] Still, LSP should not be able to use the exception to withhold a copy of a memo from the Fusion Center to its employees stating, "[t]he user manual on IDEMIA facial recognition has been delivered and is available in the conference room."

Likewise, with respect to Request 2, while LSP might not produce the contents of a PowerPoint entitled "How to Use IDEMIA Facial Recognition Software," LSP should not be able to withhold a record of a particular officer's certificate of completion of that training or a meeting invitation

[64] Additionally, no internal or external policy exception exists to expand the exception in La. R.S. 44:3(A)(3). As in *Times Picayune*, any attempt by LSP to categorize the records Ms. Odoms requested as those specifically excepted in La. R.S. 44:3(A)(3) is self-serving and is without any authority delegated to it by the legislature. Similarly, any policy concern claimed by LSP is unsupported by the statute and cannot "negate the public's fundamental right of access." *Times Picayune*, 845 So.2d at 608.
[65] Ms. Odoms does not concede this point but makes it by way of example.
[66] *See* R. 141.
[67] Ms. Odoms does not concede this point but makes it by way of example.

indicating the date of said training.[68] To otherwise hold is to abandon the requirement to narrowly interpret LPRA exceptions and resolve doubt in favor of public access, resulting in an unconstitutional, improper and arbitrary restriction on the public's right to access public records. *See id.*

c) The Appellate Court's Ruling is Contrary to the Legislative Intent Behind La. R.S. 44:3(A)(3).

In failing to reverse the trial court's holding, the appellate court expanded the scope of La. R.S. 44:3(A)(3), contrary to clear legislative intent. As in *Times Picayune*, where the Court considered the legislative intent in interpreting the statutory language of "pending claim," here, legislative intent is instructive as to the meaning of the statutory language in La. R.S. 44:3(A)(3).[69] Legislative intent can be inferred from the legislature's recent refusal to expand upon the exceptions in La. R.S. 44:3(A) via House Bill 185. HB 185 would have excepted from production *all* "[r]ecords collected and maintained by the [Fusion Center]" by adding language to La. R.S. 44:3(A) itself.[70]

First, contrary to the trial court's ruling that the appellate court left untouched, the language of La. R.S. 44:3(A)(3) does not except from production *all* Fusion Center records. If it did, there would have been no purpose in drafting and proposing HB 185, as the existing statutory language would suffice. Yet, this was not a clerical correction—it was new legislation. At the committee hearing on HB 185, LSP conceded that the existing language of La. R.S. 44:3(A)(3) did not except as many records as LSP would like it to: "there are a lot of things that go on at the Fusion Center that don't fit in the square box of [La. R.S. 44:3(A)(3)]."[71] The Committee on House and Governmental Affairs declined to advance HB 185 because the proposed exception was overly broad.[72] By rejecting HB 185, the Legislature unequivocally rejected the interpretation of La. R.S. 44:3(A)(3) that LSP now proposes—i.e., that it provides for a wholesale exemption of all Fusion Center records.[73] Therefore, the very fact that the legislature drafted and considered a new exception in HB 185 establishes that the existing exceptions

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[68] Even if the exception applies, which Ms. Odoms does not concede, as in *Times Picayune*, the trial court should have directed production of public records.

[69] Act No. 448, signed by the Governor on July 12, 1972, added the following language to La. R.S. 44:3(A): "(3) Records containing security procedures, investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof, or internal security information." Because paragraph A(3) of La. R.S. 44:3 was added in 1972, no audio of committee hearings exists. The minutes of the meeting of the Senate Judiciary Committee "A" from the June 1, 1972, indicate only that Senate Bill No. 739, which became Act. No. 448, was "reported favorably with amendments".

[70] House Bill No. 185 by Representative Charles Owen would have added to La. R.S. 44:3(A) "(9) Records collected and maintained by the Louisiana State Analytical and Fusion Exchange".

[71] *See* May 4, 2021 House and Governmental Affairs hearing, beginning at 3:05:10, available at https://house.louisiana.gov/H_Video/VideoArchivePlayer?v=house/2021/may/0504_21_HG.

[72] *Id.*, beginning at 3:13.

[73] 2021 Regular Session of the Louisiana State Legislature, HB 185 Original Text, available at http://www.legis.la.gov/legis/ViewDocument.aspx?d=1206069.

listed in La. R.S. 44:3(A)(3) are necessarily narrower.

Second, the fact that the legislature specifically considered the new exception in HB 185 and rejected it for being too broad[74] establishes that the existing language of La. R.S. 44:3(A)(3) is not as broad as the trial court held. This court may take judicial notice of the legislature's rejection of HB 185, which amounts to an express rejection of the trial court's interpretation of La. R.S. 44:3(A)(3). The existing statutory language of La. R.S. 44:3(A)(3) does not preclude production of *all* records requested by Ms. Odoms. The appellate court erroneously interpreted the LPRA in ratifying the trial court's holding of the opposite.

Conclusion

The testimonial evidence in the hearing on this matter revealed that records responsive to Ms. Odoms' request do, in fact, exist. The appellate court improperly arrived at the opposite conclusion by misinterpreting the LPRA. Further, the appellate court erroneously refused to review the trial court's holding that the exception to the LPRA found in La. R.S. 44:3(A)(3) operates as a blanket prohibition on the disclosure of *all* the records requested by Ms. Odoms.

Taking the above into consideration, Ms. Odoms respectfully asks this Court to reverse the appellate court's ruling, grant Ms. Odoms' Petition for Writ of Mandamus, and compel LSP to produce the records she requested. In the alternative, she respectfully prays that the Court remand this matter with instructions to identify any portions of the records requested that contain the specified, excepted items, and order LSP to separate the nonpublic records from the public records and produce those that are public records. Ms. Odoms further prays that the matter be remanded with instructions to hold a hearing to determine the amount of attorney's fees and costs to be awarded, plus civil penalties.[75]

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[74] *Id*. at 13:14:33. May 4, 2021 House and Governmental Affairs hearing at 3:13. (Rep. Stefanski, Chairman of Committee on House and Governmental Affairs, stated "…I tend to agree that this is…a little broad", proposed that amendments should be made to tailor the language, and expressed concern that the bill could be "misused to cover a lot of different things."

[75] The LPRA mandates an award of reasonable attorney's fees and costs to a prevailing plaintiff in an LPRA suit. La. R.S. 44:35(D) (prevailing party "shall be awarded reasonable attorney fees and other costs of litigation"). *See also City Press v. E. Baton Rouge Par. Metro. Council*, 96-1979 (La. 7/1/97); 696 So. 2d 562, 569 (holding that because plaintiffs prevailed, they were entitled to reasonable attorney's fees and other costs of litigation); *Aswell v. Div. of Admin., State*, 2015-1851 (La. App. 1 Cir. 6/3/16); 196 So. 3d 90 (holding that requester "prevailed" in his suit to enforce request for public records, thus entitling him to attorney fees, even though records were produced but only after requester was forced to file suit). Pursuant to La. R.S. 44:35(D), if the requestor prevails in part, La. R.S. 44:35(D) the court has discretion to award "reasonable attorney fees or an appropriate portion thereof." *See also Roper v. City of Baton Rouge/Par. of E. Baton Rouge*, 2016-1025 (La. App. 1 Cir. 3/15/18), 244 So. 3d 450 (holding that if a plaintiff only prevails in part in her action under the Louisiana Public Records Act, an award of attorney fees is within the court's discretion). Therefore, if the Court finds that Ms. Odoms prevails, in full or in part, in her mandamus action, the Court should reverse and remand for a hearing to determine reasonable attorney's fees or an appropriate portion thereof. *Dutton v. Guste*, 395 So.2d 683, 686 (La., 1981).

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OVER AGAIN, BUT YOU ASKED FOR ANY DOCUMENTS REFERENCING FACIAL RECOGNITION SOFTWARE. NOW YOU'RE SAYING THAT, "WELL, IF THERE WAS A REQUEST TO RUN A PHOTO THROUGH FACIAL RECOGNITION, WHY WASN'T THAT PRODUCED?" BECAUSE THAT'S NOT RESPONSIVE TO THE REQUEST THAT WAS MADE. THAT'S WHY YOU HAVE TO CHOOSE YOUR TERMS CAREFULLY WHEN YOU MAKE THESE REQUESTS. SO, I'LL SUSTAIN THE OBJECTION. YOU'VE ASKED HIM THAT THREE TIMES AND HE'S BEEN VERY, VERY CONSISTENT WITH THIS RESPONSE.

BY MR. HAMILTON:

Q. OKAY. CAPTAIN, DO SOME OF THESE REQUESTS -- YOU TESTIFIED BEFORE, AND I DON'T WANT TO TWIST YOUR WORDS, YOU REFERRED TO FACIAL RECOGNITION SOFTWARE BY A NAME; AM I CORRECT?

A. THAT'S THE TECHNOLOGY THAT WE CURRENTLY USE.

Q. AND WHAT WAS THAT NAME?

A. IDEMIA.

Q. IDEMIA. WHEN LAW ENFORCEMENT AGENCIES MAKE REQUESTS TO USE THE FACIAL RECOGNITION SOFTWARE, DO THEY REFER TO IDEMIA?

MS. AUCOIN: OBJECTION. THAT'S NOT WHAT HIS PUBLIC REQUEST IS FOR --

THE COURT: YOUR --

MS. AUCOIN: -- OR MADE FOR.

THE COURT: -- PUBLIC RECORD REQUEST WAS FOR TRAINING CONDUCTED BY THE SECURITY COMPANY IDEMIA, NOT ANY DOCUMENT REFERENCING OR USING THE TERM IDEMIA. YOU WERE VERY SPECIFIC ON NUMBER TWO, "ALL DOCUMENTS REFERENCING TRAINING CONDUCTED BY THE SECURITY COMPANY IDEMIA AND PROVIDED THE STATE

POLICE." SO, IF -- AGAIN, IF THE BUNKIE POLICE DEPARTMENT SAYS, "I WANT YOU TO RUN THIS THROUGH THE IDEMIA PROGRAM," THAT'S NOT RESPONSIVE TO THE REQUEST YOU MADE BECAUSE IT DOESN'T INVOLVE TRAINING TO STATE POLICE BY IDEMIA. SO, LET'S BE SPECIFIC TO THE REQUEST.

MR. HAMILTON: WELL, YOUR HONOR, WHAT I'M TRYING TO GET OUT IS --

THE COURT: I UNDERSTAND WHAT --

MR. HAMILTON: -- YOU KNOW, DID THE REQUEST --

THE COURT: -- YOU'RE TRYING TO GET AT. AND I'M TELLING YOU, LET'S STICK TO THE ISSUE. YOU'RE NOT GOING TO EXPAND --

MR. HAMILTON: OKAY.

THE COURT: -- THE PUBLIC REQUESTS REQUEST BY SAYING, "WELL, ALTHOUGH WE ONLY ASKED FOR TRAINING BY IDEMIA, NOW WE WANT TO EXPAND IT TO THE REFERENCE OR THE USE OF THE WORD IDEMIA." THAT'S GOING BEYOND THE SCOPE OF THE PUBLIC RECORDS REQUEST. SO --

MR. HAMILTON: OKAY.

THE COURT: -- I'LL SUSTAIN THE OBJECTION.

BY MR. HAMILTON:

Q. OKAY. CAPTAIN, WHEN YOU PERFORMED YOUR SEARCH AND YOU LOOKED FOR DOCUMENTS REFERENCING TRAINING CONDUCTED BY IDEMIA, DID YOU FIND ANY DOCUMENTS, INCLUDING EMAILS, CALENDAR INVITATIONS, AND MEMORANDA?

A. NO.

Q. YOU'VE ACKNOWLEDGED PREVIOUSLY THAT IDEMIA DID CONDUCT THE TRAINING FOR LOUISIANA STATE POLICE?

A. YES.

OF ANY KIND IN ANY FORM, ET CETERA." SO, I JUST WANT TO BE CLEAR, YOU SEARCHED FOR ALL THOSE THINGS?

A. YES, CORRECT.

Q. AND YOU FOUND NOTHING?

A. NOTHING RELATED TO FACIAL RECOGNITION SOFTWARE.

Q. DOES LOUISIANA STATE POLICE COMMUNICATE WITH OTHER LAW ENFORCEMENT AGENCIES ABOUT THE FACIAL RECOGNITION SOFTWARE?

A. WE SUPPORT THE OTHER LOCAL LAW ENFORCEMENT AS WELL AS FEDERAL AGENCIES IN THEIR INVESTIGATIVE PROCESS BY PROVIDING THAT INVESTIGATIVE TOOL TO THEM WHEN THEY REQUEST IT.

Q. AND WHEN THEY MAKE THOSE REQUESTS TO LOUISIANA STATE POLICE, THEIR EMAILS GENERALLY REFERENCE THAT SOFTWARE; DO THEY NOT?

A. THEY SPECIFICALLY -- THERE'S A LOT OF THINGS THEY CAN REQUEST. SOMETIMES IT'S FACIAL RECOGNITION.

Q. AND SO, WHY WOULD THOSE EMAILS NOT TURN UP IN YOUR SEARCH?

MS. AUCOIN: OBJECTION. HE SPECIFICALLY ASKED FOR EMAILS BETWEEN STATE POLICE AND ELECTED OFFICIALS. HE DIDN'T ASK FOR EMAILS BETWEEN --

THE COURT: WELL --

MS. AUCOIN: -- LOUISIANA STATE --

THE COURT: -- AND YOU ALSO --

MS. AUCOIN: -- POLICE AND EVERY SINGLE LAW ENFORCEMENT --

THE COURT: YOU ALSO ASKED FOR DOCUMENTS REFERENCING FACIAL RECOGNITION SOFTWARE. THE FACT THAT THEY USE THE TERM "FACIAL RECOGNITION" IN A REQUEST, THAT DOESN'T QUALIFY IT AS SOFTWARE. I DON'T SEE WHERE THAT QUESTION YOU POSED WOULD HAVE BEEN RESPONSIVE TO THE REQUEST THAT WAS MADE ON SEPTEMBER 4TH, 2019. YOU SPECIFICALLY SAID

"SOFTWARE." SO, IF, YOU KNOW, BUNKIE POLICE DEPARTMENT SAYS, "WE WANT TO RUN THIS PICTURE THROUGH FACIAL RECOGNITION," THAT IN AND OF ITSELF WOULD NOT BE RESPONSIVE TO THE REQUEST REFERENCING FACIAL RECOGNITION SOFTWARE.

MR. HAMILTON: YES, YOUR HONOR. I WOULD ARGUE THAT ANY REQUEST THAT REFERENCES THE SOFTWARE USED BY THE STATE POLICE IS RESPONSIVE TO THIS REQUEST.

THE COURT: OKAY.

MR. HAMILTON: THESE ARE DOCUMENTS REFERENCING THE SOFTWARE, AND IT DOESN'T HAVE TO ACTUALLY USE THE FULL PHRASE "FACIAL RECOGNITION SOFTWARE," BUT ANY DOCUMENT THAT REQUESTS THE USE OF THAT SOFTWARE --

THE COURT: I UNDERSTAND.

MR. HAMILTON: -- WOULD BE REFERENCING THAT SOFTWARE.

THE COURT: AND THAT WAS NOT AN ATTEMPT TO DEBATE THE ISSUE. THAT WAS A RULING BY THE COURT. SO, YOU CAN ASK THE NEXT QUESTION.

BY MR. HAMILTON:

Q. WERE OTHER LAW ENFORCEMENT AGENCIES REQUEST THE USE OF FACIAL RECOGNITION SOFTWARE, CAPTAIN?

A. THE FUSION CENTER HAS A USER REQUEST FORM THAT'S REQUIRED TO COMPLETE BY THE REQUESTING LAW ENFORCEMENT AGENCY. ONE OF THE OPTIONS IS FACIAL RECOGNITION. SOMETIMES THEY REQUEST THAT, IN ADDITION TO OTHER INVESTIGATIVE TECHNOLOGY TOOLS.

Q. SO, AGAIN, MY QUESTION IS: WHY WOULD THOSE DOCUMENTS NOT BE RESPONSIVE TO THE REQUEST?

MS. AUCOIN: OBJECTION. HE'S ANSWERED THAT

FUSION CENTER?

A. WE ARE THE ONLY UNIT IN STATE POLICE THAT UTILIZES THAT TECHNOLOGY. NO ONE ELSE USES IT WITHIN THE DEPARTMENT.

Q. AND THAT'S WHY YOU DIDN'T SEARCH BEYOND THE FUSION CENTER?

A. FOR THE HARD COPY DOCUMENTS, YES.

MR. HAMILTON: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

THE COURT: MS. AUCOIN, ANYTHING FURTHER?

MS. AUCOIN: NO, SIR.

THE COURT: ONE QUESTION, WHO IS CAPTAIN J.B. SLATON?

MS. AUCOIN: HE IS -- HE WAS THE CAPTAIN OF PUBLIC AFFAIRS AT THE TIME THE REQUEST WAS MADE AND AT THE TIME THE REQUEST WAS RESPONDED TO.

THE COURT: ALL RIGHT. ANYTHING FURTHER, MS. AUCOIN?

MS. AUCOIN: NO, SIR.

THE COURT: MR. HAMILTON, ANYTHING FURTHER FROM PLAINTIFF?

MR. HAMILTON: NO, YOUR HONOR.

THE COURT: ALL RIGHT. WELL, BASED ON BOTH THE EXHIBITS AND, AS SUPPLEMENTED BY THE TESTIMONY OF CAPTAIN HODGES, IT APPEARS THAT WITH REGARD TO QUESTION ONE, ALL DOCUMENTS REFERENCING FACIAL RECOGNITION SOFTWARE, INCLUDING BUT NOT LIMITED TO, MEETING AGENDA, MEETING MINUTES, PUBLIC NOTICES, COMMUNICATIONS BETWEEN YOUR OFFICE AND ELECTED LEADERS, THERE WAS A SEARCH AND THERE WERE NO DOCUMENTS REFERENCING COMPUTER -- I'M SORRY, FACIAL RECOGNITION SOFTWARE. THERE WAS NOTHING RESPONSIVE TO THAT REQUEST. AS TO ALL DOCUMENTS

REFERENCING TRAINING CONDUCTED BY IDEMIA, INCLUDING EMAILS, AGAIN, CAPTAIN HODGES SAID, "WE'VE GOT NONE." I DO THINK THAT THE TRAINING, IF THERE WERE DOCUMENTS CONDUCTED, FALLS UNDER 443(A)(3), INVESTIGATIVE TRAINING INFORMATION OR AIDS. AND I THINK THAT THE SOFTWARE, IF THERE WERE -- IF IT GOES BEYOND THE SOFTWARE AND IT GOES TO THE ACTUAL TOOL, THAT'S INVESTIGATIVE TRAINING; AGAIN, TECHNIQUES, EQUIPMENT, CAPTAIN HODGES USED THE TERM, "THEY HAVE A FACIAL RECOGNITION SYSTEM AS AN INVESTIGATIVE TOOL AND IT'S AN INVESTIGATIVE TECHNIQUE THAT THEY EMPLOY AT THE REQUEST OF OTHER LAW ENFORCEMENT AGENCIES." AND I THINK THAT IF THEY HAD SOMETHING RESPONSIVE TO THOSE, IT WOULD FALL UNDER THE EXCLUSION OF R.S. 443(A)(3). BUT I'M SATISFIED, BASED ON WHAT I HAVE HEARD, THAT THERE ARE NO DOCUMENTS THAT ARE MAINTAINED BY STATE POLICE SPECIFIC TO THE REQUESTS THAT WERE MADE. AND FOR THOSE REASONS, I'M GOING TO DENY THE REQUEST FOR THE MANDAMUS. COUNSEL, ANYTHING FURTHER?

MS. AUCOIN: NO, YOUR HONOR.

MR. HAMILTON: NO, YOUR HONOR.

THE COURT: MS. AUCOIN, IF I CAN IMPOSE UPON YOU TO PREPARE A JUDGMENT IN ACCORDANCE WITH THE COURT'S RULING AND PURSUANT TO UNIFORM RULE 9.5, CIRCULATE SAME TO MR. HAMILTON FOR HIS REVIEW AS TO FORM AND SUBSTANCE. ASSUMING THERE IS NO OBJECTION TO THE FORM AND SUBSTANCE OF THE PROPOSED JUDGMENT, IT CAN BE THEN SUBMITTED TO THE COURT WITH THE APPROPRIATE 9.5 CERTIFICATION AND THE COURT WILL THEN EXECUTE IT UPON RECEIPT.

ALANAH ODOMS	DOCKET NO. C-704564
	19TH JUDICIAL DISTRICT COURT
VERSUS	PARISH OF EAST BATON ROUGE
CHAVEZ CAMMON	STATE OF LOUISIANA

JUDGMENT

This matter came before this Honorable Court on March 23, 2021, on a hearing pursuant to Petitioner's "Petition for Writ of Mandamus Pursuant to the Public Records Law."

Present in court were Bruce Hamilton on behalf of Petitioner Alanah Odoms; Adrienne E. Aucoin, Jeremiah J. Sams, and Capt. Robert Hodges on behalf of The State of Louisiana, through the Department of Public Safety and Corrections, Public Safety Services, Office of State Police.

Considering the testimony of the witness, Capt. Hodges, evidence admitted into the record, and oral arguments, and for oral reasons assigned at the hearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is rendered in favor of the State of Louisiana, through the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, **DENYING** Petitioner's request for a writ of mandamus.

Judgment rendered in open court on March 23, 2021, and signed in Baton Rouge, Louisiana this 17 day of April, 2021.

William A Morvant
Judge William A. Morvant, 19TH Judicial District Court

RESPECTFULLY SUBMITTED:

ADRIENNE E. AUCOIN
LSBA Bar Roll No. 31606
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I HEREBY CERTIFY THAT ON THIS DAY A COPY OF THE WRITTEN REASONS FOR JUDGMENT / JUDGMENT / ORDER / COMMISSIONER'S RECOMMENDATION WAS MAILED BY ME WITH SUFFICIENT POSTAGE AFFIXED.
SEE ATTACHED LETTER FOR LIST OF RECIPIENTS.

DONE AND MAILED ON April 20, 2021

Gina Stephens Randall
DEPUTY CLERK OF COURT

EXHIBIT E

Office Of The Clerk
Court of Appeal, First Circuit
State of Louisiana
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Rodd Naquin
Clerk of Court

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Notice of Judgment and Disposition

March 03, 2022

Docket Number: 2021 - CA - 0828

Alanah Odoms
versus
Chavez Cammon

TO:

Faye D. Morrison
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Hon. William A. Morvant
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In accordance with Local Rule 6 of the Court of Appeal, First Circuit, I hereby certify that this notice of judgment and disposition and the attached disposition were transmitted this date to the trial judge or equivalent, all counsel of record, and all parties not represented by counsel.

Peggy J. Landry

RODD NAQUIN
CLERK OF COURT

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

GH
WRC by GH

2021 CA 0828

ALANAH ODOMS

VERSUS

CHAVEZ CAMMON

Judgment rendered: MAR 0 3 2022

* * * * *

On Appeal from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
No. 704564

The Honorable William A. Morvant, Judge Presiding

* * * * *

Bruce Hamilton
Megan E. Snider
New Orleans, Louisiana

Attorneys for Plaintiff/Appellant
Alanah Odoms

Jeremiah J. Sams
Faye D. Morrison
Baton Rouge, Louisiana

Attorneys for Defendant/Appellee
Chavez Cammon

* * * * *

BEFORE: GUIDRY, HOLDRIDGE, AND CHUTZ, JJ.

Guidry, J. Concurs.

HOLDRIDGE, J.

This appeal involves a mandamus action seeking to obtain documents pursuant to the Louisiana Public Records Act, La. R.S. 44:1, *et seq.* The plaintiff, Alanah Odoms, the Executive Director for the American Civil Liberties Union of Louisiana, appeals the April 17, 2021 trial court judgment denying her request for a writ of mandamus. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On February 9, 2021, the plaintiff filed a petition for a writ of mandamus pursuant to the Louisiana Public Records Act naming as a defendant, Chavez Cammon, the Louisiana State Police (LSP) captain and commander of the public affairs/recruiting sections. The plaintiff's petition stated that the defendant was the official records custodian for the LSP and served as the central point for public records requests. In her petition, the plaintiff stated that on September 4, 2019, she made a public records request to the LSP that requested information on the facial recognition software used by the LSP. Specifically, the plaintiff's request stated the following:

> 1. All documents referencing facial recognition software currently being used by the [LSP], including its "Fusion" center, including but not limited to meeting agendas, meeting minutes, public notice, communications between your office and elected leaders, and analyses.
> 2. All documents referencing training conducted by the security company IDEMIA and provided to the [LSP], including but not limited to e-mails, calendar invitations, and memoranda.

On September 27, 2019, the LSP responded with the following, stating in pertinent part:

> As it pertains to your request for "meeting agendas, meeting minutes, public notice, and communications between your office and elected leaders," [Louisiana State Analytic and Fusion Exchange[1]] maintains no responsive records.
>
> As it pertains to the remainder of the records you request ... your public records request is denied as the type of information you seek pertains to investigative techniques, investigative technical equipment

[1] The LSP employed a facial recognition system through a center known as the Louisiana State Analytical and Fusion Exchange (Fusion Center) in Baton Rouge.

> or instructions on its use, and investigative training information or aids. Louisiana Revised Statute 44:3(A)(3) specifically exempts from the public records "[r]ecords containing ... investigative training information or aids, investigative techniques, investigative technical equipment or instructions on the use thereof[.]"

On October 2, 2019, the legal director for the American Civil Liberties Union of Louisiana sought clarification in a second request from the LSP for its denial of the plaintiff's first public records request. The LSP responded on December 13, 2019, stating that "any facial recognition software [was] investigative technical equipment covered by the exemption found in La. R.S. 44:3(A)(3). The nature of the documents you seek referencing any facial recognition software and training [were] also covered by the exemption found in La. R.S. 44:3(A)(3)." Thereafter, on February 9, 2021, the plaintiff filed her petition for a writ of mandamus.

On March 23, 2021, the trial court held a hearing on the plaintiff's petition for a writ of mandamus. At the hearing, the counsel for both parties presented arguments and the plaintiff's counsel offered into evidence several exhibits, which included the plaintiff's public records requests made on September 4, 2019 and October 2, 2019, as well as the response letters from the LSP dated September 27, 2019 and December 13, 2019. The custodian of records for the Investigative Support Section of the LSP, Captain Robert Hodges, testified at the hearing on behalf of the LSP. Captain Hodges testified that he was familiar with the plaintiff's public records request and that he assisted in preparing the response to her request. Captain Hodges confirmed that a search for documents related to the plaintiff's public records request was performed. Captain Hodges stated that he reached out to the Fusion Center manager as well as the Director of Research to determine when the facial recognition software was first used and how the LSP employees were trained. He explained that a search was conducted through the State's Office of Technology Services, which maintained LSP's e-mail and calendar system. Captain Hodges stated that he directed the Office of Technology Services to identify communications and calendar

events related to the Idemia Technology.[2] The search included all LSP personnel; however, no documents were identified. Captain Hodges stated that he also looked for physical documents, but there were none found. Captain Hodges' testimony confirmed multiple times that a search was conducted and that no documents were found.

After hearing arguments from the parties, the trial court stated, in pertinent part, the following:

> BASED ON BOTH THE EXHIBITS AND, AS SUPPLEMENTED BY THE TESTIMONY OF CAPTAIN HODGES, IT APPEARS THAT WITH REGARD TO QUESTION ONE, ALL DOCUMENTS REFERENCING FACIAL RECOGNITION SOFTWARE, INCLUDING BUT NOT LIMITED TO, MEETING AGENDA, MEETING MINUTES, PUBLIC NOTICES, COMMUNICATIONS BETWEEN YOUR OFFICE AND ELECTED LEADERS, THERE WAS A SEARCH AND THERE WERE NO DOCUMENTS REFERENCING ... FACIAL RECOGNITION SOFTWARE. THERE WAS NOTHING RESPONSIVE TO THAT REQUEST. AS TO ALL DOCUMENTS REFERENCING TRAINING CONDUCTED BY IDEMIA, INCLUDING EMAILS, AGAIN, CAPTAIN HODGES SAID, "WE'VE GOT NONE." I DO THINK THAT THE TRAINING, IF THERE WERE DOCUMENTS CONDUCTED, FALLS UNDER [La. R.S. 44:3(A)(3)], INVESTIGATIVE TRAINING INFORMATION OR AIDS. AND I THINK THAT THE SOFTWARE, IF THERE WERE -- IF IT GOES BEYOND THE SOFTWARE AND IT GOES TO THE ACTUAL TOOL, THAT'S INVESTIGATIVE TRAINING; AGAIN, TECHNIQUES, EQUIPMENT, CAPTAIN HODGES USED THE TERM, "THEY HAVE A FACIAL RECOGNITION SYSTEM AS AN INVESTIGATIVE TOOL AND IT'S AN INVESTIGATIVE TECHNIQUE THAT THEY EMPLOY AT THE REQUEST OF OTHER LAW ENFORCEMENT AGENCIES." AND I THINK THAT IF THEY HAD SOMETHING RESPONSIVE TO THOSE, IT WOULD FALL UNDER THE EXCLUSION OF [La. R.S. 44:3(A)(3).] BUT I'M SATISFIED, BASED ON WHAT I HAVE HEARD, THAT THERE ARE NO DOCUMENTS THAT ARE MAINTAINED BY [THE LSP] SPECIFIC TO THE REQUESTS THAT WERE MADE. AND FOR THOSE REASONS, I'M GOING TO DENY THE REQUEST FOR THE MANDAMUS.

[2] Idemia was the security company that created the facial recognition software program that the LSP utilized.

A judgment was signed on April 17, 2021, in accordance with the trial court's oral ruling, denying the plaintiff's request for a writ of mandamus. Thereafter, the plaintiff devoltuively appealed the trial court's judgment.

APPLICABLE LAW

It is well settled that the public's right of access to public records is a fundamental right guaranteed by both the Louisiana Constitution and the Public Records Act set forth in La. R.S. 44:1 *et seq*. *Carolina Biological Supply Company v. East Baton Rouge Parish School Board*, 2015-1080 (La. App. 1 Cir. 8/31/16), 202 So.3d 1121, 1125. Article 12, section 3 of the Louisiana Constitution mandates that "[n]o person shall be denied the right to ... examine public documents, except in cases established by law."

The custodian of the record shall present a public records request to any person of the age of majority who so requests. La. R.S. 44:32(A). While the record generally must be made available immediately, the Public Records Act recognizes that some reasonable delay may be necessary to compile, review, and, when necessary, redact or withhold certain records that are not subject to production. See La. R.S. 44:33; *Stevens v. St. Tammany Parish Government*, 2017-0959 (La. App. 1 Cir. 7/18/18), 264 So.3d 456, 462, writ denied, 2018-2062 (La. 2/18/19), 265 So.3d 773. In such a case, within five business days of the request, the custodian must provide a written "estimate of the time reasonably necessary for collection, segregation, redaction, examination, or review of a records request[.]" La. R.S. 44:35(A); *Stevens*, 264 So.3d at 462.

The enforcement provision under the Public Records Act is contained in La. R.S. 44:35 and provides, in pertinent part:

> A. Any person who has been denied the right to inspect, copy, reproduce, or obtain a copy or reproduction of a record under the provisions of this Chapter, either by a determination of the custodian or by the passage of five days, exclusive of Saturdays, Sundays, and legal public holidays, from the date of his in-person, written, or electronic

> request without receiving a determination in writing by the custodian or an estimate of the time reasonably necessary for collection, segregation, redaction, examination, or review of a records request, may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney 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 Code of Civil Procedure article 3863 provides that a writ of mandamus may be directed to a public officer to compel the performance of a ministerial duty required by law. A writ of mandamus is not an appropriate procedure where there is an element of discretion left to the public officer. *Vandenweghe v. Parish of Jefferson*, 11-52 (La. App. 5 Cir. 5/24/11), 70 So.3d 51, 58, writ denied, 2011-1333 (La. 9/30/11), 71 So.3d 289. A writ of mandamus is "an extraordinary remedy, to be applied where ordinary means fail to afford adequate relief." *Hoag v. State*, 2004-0857 (La. 12/1/04), 889 So.2d 1019, 1023. The remedy "must be used sparingly ... to compel action that is clearly provided by law." *Hamp's Const., L.L.C. v. Housing Authority of New Orleans*, 2010-0816 (La. App. 4 Cir. 12/1/10), 52 So.3d 970, 973, quoting *Allen v. St. Tammany Parish Police Jury*, 96-0938 (La. App. 1 Cir. 2/14/97), 690 So.2d 150, 153, writ denied, 97-0599 (La. 4/18/97), 692 So.2d 455. "Mandamus will not lie in matters in which discretion and evaluation of evidence must be exercised." *Hamp's*, 52 So.3d at 973. "The remedy is not available to command the performance of an act that contains any element of discretion, however slight." *Id.* However, La. R.S. 44:35 authorizes the court to grant mandamus relief in all cases where a public record is improperly withheld from a person seeking disclosure.

Generally, an appellate court reviews a trial court's judgment on a writ of mandamus under an abuse of discretion standard. *Commodore v. City of New Orleans*, 2019-0127 (La. App. 4 Cir. 6/20/19), 275 So.3d 457, 465. Also, a trial court's findings of fact in a mandamus proceeding are subject to a manifest error standard of review. *Id.* However, questions of law, such as the proper interpretation of a statute, are reviewed by appellate courts under the *de novo* standard of review, and the appellate court is not required to give deference to the lower court in interpreting a statute. *Id.* at 465-66.

DISCUSSION

In the instant matter, the plaintiff assigns as error that the trial court erred in "creating requirements not found in the [Louisiana Public Records Act] to block the production of records" requested by the plaintiff. Specifically, the plaintiff argues that the Louisiana Public Records Act does not mandate the use of search terms or require that records must use the exact phraseology of the public records request. The plaintiff further argues that the law is silent on specifics relating to language requestors must use in making their request. Therefore, the plaintiff argues that the trial court erred in holding that her failure to use specific search terms was fatal to her public records request because the law is silent on the specifics that language requestors must use in making a public records request.

In *Lewis v. Morrell*, 2016-1055 (La. App. 4 Cir. 4/5/17), 215 So.3d 737, the Fourth Circuit Court of Appeal set forth the six requirements for invoking the mandamus remedy under the Public Records Act: (1) a request must be made; (2) the requester must be a "person;" (3) the request must be made to a "custodian;" (4) the document requested must be a "public record;" (5) the document requested must exist; and (6) there must be a failure by the custodian to respond to the request. *Id.* 742-44. In this case, the plaintiff filed a writ of mandamus seeking the enforcement

of her public records request to the LSP custodian of records, Captain Chavez Cammon. The record further reveals that Captain Hodges, the records custodian for the Investigative Support Section of the LSP, assisted in preparing the responses to the plaintiff's public record request. Captain Hodges' testimony confirmed that a search was conducted on all documents related to facial recognition software and no documents were identified. Therefore, the LSP confirmed that the first, second, third, and sixth requirements of the public records request were satisfied.

However, in order for a mandamus judgment to be issued in this case, the fifth requirement in *Lewis* requires that the document requested must exist. *Id.* at 743. The record reveals that Captain Hodges searched for Idemia and Morphotrack software because that is the only facial recognition software that the LSP utilizes. Captain Hodges's testimony confirmed that he searched for all documents relating to facial recognition software and no documents were identified. Captain Hodges' testimony further confirmed that he made inquiries about whether any facial recognition software training was provided by Idemia to identify records responsive to the plaintiff's public records request and he identified no documents. Thus, Captain Hodges' testimony remained consistent that no documents were maintained by the LSP specific to the plaintiff's public records request on facial recognition software. Therefore, we find that the trial court was correct in its determination that there are no documents maintained by the LSP specific to the plaintiff's public records request. Because we find that the fifth requirement for invoking the mandamus remedy under the Public Records Act is not met, we pretermit analyzing the fourth requirement; *i.e.* whether the document requested is a "public record."

Accordingly, after our *de novo* review of the record, it is apparent that the plaintiff has failed to satisfy her burden of showing that the extraordinary remedy of mandamus is warranted in this case pursuant to the Louisiana Public Records Act, La. R.S. 44:1, *et seq.* According to the testimony of Captain Hodges and the holding

by the trial court, no public record exist as to the plaintiff's public records request. Therefore, one of the six requirements identified in *Lewis* for invoking the mandamus remedy under the Public Records Act was not met. We find no error in the trial court's judgment denying the plaintiff's petition for a writ of mandamus.[3]

CONCLUSION

For the above reasons, the April 17, 2021 judgment of the trial court is affirmed. We assess appeal costs to the plaintiff, Alanah Odoms.

AFFIRMED.

[3] Due to our holding in this matter, we pretermit discussion of the plaintiff's second assignment of error as to the trial court broadening the statutory limitation of La. R.S. 44:3(A)(3) as this argument was not asserted before the trial court and is being raised on appeal for the first time.