

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

Case No.: _____

ANDREA GOULBOURNE-SMITH and DERICK SMITH
in their individual capacities as Next of Kin to
ANDRE DEREK SMITH, deceased,

Plaintiffs,

vs.

TOWN OF DAVIE, FLORIDA

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF AND RELEASE OF PUBLIC RECORDS,
OR ALTERNATIVELY FOR MANDAMUS RELIEF
(Accelerated Hearing Required by Fla. Stat. §119.11(1))

COMES NOW, Plaintiffs, ANDREA GOULBOURNE-SMITH and DERICK SMITH as
Next of Kin to ANDRE DEREK SMITH, deceased, and sues Defendant, the TOWN OF DAVIE,
FLORIDA, a Florida municipal corporation ("Davie"), and alleges as follows:

INTRODUCTION

1. This is an action seeking a writ of mandamus or, alternatively, declaratory relief,
concerning violations of the Florida Public Records Act, Florida Statute §119.01-15, by the
Town of Davie, a Florida municipal corporation in Broward County, Florida.

2. Plaintiffs contend that Defendant refuses to perform its statutory duty to make
public records in their possession available for inspection and copying.

JURISDICTION

3. This Court has jurisdiction under Article I, Section 24 of the Florida Constitution,
and Florida Statute §119.07.

4. This Court has Jurisdiction to issue a writ of mandamus under Florida Constitution Article V, §5(b), and Florida Rule of Civil Procedure 1.630.

5. This Court has jurisdiction to enter declaratory relief under Florida Statute Chapter 86.

PARTIES

6. Plaintiffs Andrea Goulbourne-Smith and Derick Smith as Next of Kin to Andre Derek Smith, deceased, are citizens of the State of Florida. Plaintiffs both reside in Broward County, Florida.

7. Defendant, Town of Davie, is a Florida municipal corporation and a subdivision of the State of Florida, authorized to operate and conduct business in Broward County, and is operating and conducting business in Broward County, Florida, which includes managing, supervising and overseeing the Davie Police Department.

8. The subject matter of the present action took place in Davie, Broward County, Florida.

FACTUAL ALLEGATIONS

9. On November 1, 2017, a twenty-year-old unarmed African-American male, Andre Derek Smith, was fatally shot multiple times inside a crowded CVS located at 4610 South University Drive in Davie, Florida ("CVS"), by a thirty-seven-year-old White male, Matthew Jay Barry ("Barry"), over a dispute involving a cell phone.

10. Defendant Town of Davie, Florida, by and through the Davie Police Department has refused to allow the deceased's parents and next of kin, Andrea Goulbourne-Smith and Derick Smith, access to documents, which include video, audio, and photographic evidence depicting the killing of their son, Andre Derek Smith.

11. Despite this denial, Defendant and its agents, the Davie Police Department, have released information to the public regarding the subject incident, and have discussed specific facts about what is depicted in the surveillance video(s), witness statements, audio recordings and documents depicting the subject shooting.

12. During a press conference, Defendant's agent, employee and spokesperson, Major Dale Engle with the Davie Police Department has made numerous statements regarding what the surveillance video and evidence depicts including but not limited to the following: "Barry feared for his life," and that the "[s]urveillance video clearly shows that Mr. Barry enters the store and that Mr. Smith is right behind him. It looks like Mr. Barry is attempting to get away from Smith. The surveillance video also shows Smith pursuing Barry around different displays at the front of the store." "Smith tried to get the phone back and Barry entered the store, asking clerks to call 911." "Mr. Barry was able to separate himself, push Smith away from him, physically push him away." "He's able to retrieve a gun he has on him, and he fires several rounds, striking Smith. Smith ultimately succumbs to his injuries." "From the interviews that we received, I think that Barry felt they were going to try and get the phone back after there was the exchange of money for the phone, and that these two individuals may flee with both the money and the phone...[b]ut that is purely speculation on my part."

13. Major Engle publicly commented that security cameras corroborated Barry's story, provided overviews of witness statements, surmised that this incident was a Craigslist deal gone bad, and provided a possible motive based on the evidence despite ultimately stating that he is "purely speculating."

14. By virtue of these and other statements about the documents, information gathered and images depicted in the surveillance footage during their November 1, 2017 and

November 9, 2017 press conferences, as well as other statements made to the media, the information and documents sought by Plaintiffs have already been placed in the public domain by Defendant and its agents, the Davie Police Department.

15. Undersigned counsel for Plaintiffs made a public records request pursuant to Florida Statute §119.07, requesting the release of surveillance footage, audio recordings documents and information related to the subject incident. (*See* Public Records Request, attached hereto as Exhibit A).

16. To date, Defendant has not complied with said public records request, and such request has been denied. (*See* Public Records Request Denial, attached hereto as Exhibit B). Moreover, during a press conference Davie Police Department's legal adviser stated: "When the Town of Davie Police Department believes it is appropriate to show that video and share details of the investigation, that will happen with the family."

17. Pursuant to the Florida Public Records Act, Florida Statutes §119.01-15, Plaintiffs have a legal right to obtain the requested documents requested in Plaintiff's public records request, and said documents critically relate to Plaintiff's ability and right to pursue legal action against Barry.

18. To date, Defendant has expressly denied Plaintiffs' right as next of kin to video, audio, and photographic evidence depicting the killing of their son. Yet, Defendant by and through Davie Police Department, has made numerous public statements detailing from Major Dale Engle's perspective what the surveillance video, audio, and other evidence depicts, and gratuitously offering speculative motives and defenses for Barry whom shot 20-year-old unarmed Andre Smith and endangered numerous innocent citizens patronizing CVS midday.

19. Moreover, one of the first Davie Police Department officers that spoke with Andrea Goulbourne-Smith, told her that her son died, did not tell her what caused her son's death, but told her not to allow the media to make it into a "race-thing," thereby denying race as a possible motivating factor before the investigation was fully underway. Not only are Plaintiffs' legally entitled to the documents and evidence requested and said evidence has been placed in the public domain by way of Dale Engle's detailed descriptions of his perception of what the evidence depicts- Plaintiffs have grave concern over the maintenance and preservation of evidence, bias involved in the investigation, and Davie Police Department's failure to conduct a fair and impartial investigation- make the release of said evidence of urgent concern. Furthermore, the family is considering an independent autopsy and believe the evidence that they are currently legally entitled to would like to avoid and preserve the dignity of their son's body.

20. In light of the foregoing, Plaintiffs share a common concern regarding the preservation of evidence during the police investigation into this shooting incident.

21. Therefore, for the foregoing reasons, Plaintiffs seek this Court's intervention in obtaining the requested documents that Plaintiffs are lawfully entitled to on an expedited basis.

COUNT I
(Request for Injunctive Relief)

22. Plaintiffs adopt and reallege paragraphs 1-21 above as if fully set forth herein.

23. The documents requested by Plaintiffs are public records within the meaning of Florida Statutes §119.011(12), as they were made or received in connection with agency business.

24. Defendant has failed to produce the requested public records.

25. As custodian of public records, Defendant has a mandatory and non-discretionary duty to permit the inspection of public records.

26. The impermissible withholding of documents that are constitutionally mandated to be made available for public inspection constitutes irreparable injury and is an injury not ordinarily, nor in this case, compensable in damages.

27. Unless the injunctive relief sought is ordered, Defendant will continue to violate Chapter 119.

28. Plaintiff seeks and are entitled to an accelerated hearing pursuant to Florida Statute §119.11(1).

29. Plaintiffs have retained the undersigned counselors to represent them in this matter.

30. Plaintiffs are entitled to recover reasonable attorneys' fees and costs incurred in bringing this action under Florida Statute §119.12.

31. Plaintiffs demand injunctive relief against Defendant, and request that this Court enter an order compelling Defendant to comply with Plaintiff's public records requests, and order further relief as may be appropriate.

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- A. Set an accelerated hearing pursuant to § 119.11 (1), Fla. Stat.;
- B. Enter an injunction ordering Defendant to comply with Plaintiffs' public records request and requiring Defendant to make the requested records available for inspection;
- C. Award reasonable costs and attorneys' fees pursuant to Fla. Stat. §119.12; and
- D. Any such other relief as the Court deems appropriate.

COUNT II
(Request for Writ of Mandamus)

32. Plaintiffs adopt and reallege paragraphs 1-21 above as if fully set forth herein.

33. The documents requested by Plaintiffs are public records within the meaning of Florida Statutes Section 119.011(12), as they were made or received in connection with agency business.

34. Defendant has failed to produce the requested records.

35. As custodian of public records, Defendant has a mandatory and nondiscretionary duty to permit the inspection of all public records.

36. Plaintiffs have a clear legal and constitutional right to inspect all public records to which no statutory exemption applies. Fla. Const. Art. I, § 24(a); Fla. Stat. §119.07(1)(a).

37. Defendant has a clear statutory duty to permit inspection and copying of public records.

38. Plaintiffs have no other adequate remedy at law.

39. Plaintiffs seek and are entitled to an accelerated hearing under Florida Statute §119.11(1).

40. Plaintiffs have retained the undersigned counselors to represent them in this matter.

41. Plaintiffs are entitled to recover reasonable attorneys' fees and costs incurred in bringing this action under Florida Statute §119.12.

42. Plaintiffs request that this Court grant a Writ of Mandamus against Defendant and enter an order compelling Defendant to comply with Plaintiffs' public records requests, and order other further relief as may be appropriate.

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- A. Set an accelerated hearing pursuant to §119.11(1), Fla. Stat.;
- B. Enter an injunction ordering Defendant to comply with Plaintiffs' public records request and requiring Defendant to make the requested records available for inspection;

- C. Award reasonable costs and attorneys' fees pursuant to Fla. Stat. §119.12; and
D. Any such other relief as the Court deems appropriate.

PRAYER FOR RELIEF

Plaintiffs ANDREA GOULBOURNE-SMITH and DERICK SMITH as the next of kin to ANDRE DEREK SMITH, deceased, respectfully request that this Court grant injunctive relief and/or issue a Writ of Mandamus against Defendant ordering Defendant to comply with Plaintiff's public records request, and furthermore, enter an Order granting Plaintiff's attorneys' fees and costs for the filing of this action, and any further appropriate relief.

Dated: November 10, 2017.

Respectfully Submitted,

/s/Jasmine Rand

Jasmine Rand, Esquire

FBN: 0077047

RAND LAW, L.L.C.

2525 Ponce de Leon Blvd., Ste. 300

Miami, Florida 33134

(305) 906-6400 Telephone

(305) 503-9235 Facsimile

Attorney for Plaintiffs

/s/Jose Baez

Jose Baez, Esquire

FBN: 13232

THE BAEZ LAW FIRM

40 SW 13th Street, Ste. 901

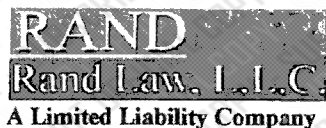
Miami, Florida 33134

(305) 999-5100 Telephone

(305) 999-5111 Facsimile

Attorney for Plaintiffs

EXHIBIT A
TO THE COMPLAINT



November 6, 2017

Sent via U.S. Mail and Facsimile

Davie Police Department
Attn: Records Department
1230 South Nob Hill Rd.
Davie, Florida 33324

Re: Records Request: Andre Derek Smith
Date of Incident: On or about, November 1, 2017
Incident: Shooting of Andre Derek Smith at CVS

To Whom It May Concern:

Our firm alongside Jose Baez, Esquire with the Baez Law Firm, represent Andrea Goulbourne Smith and Derick Smith the natural parents and next of kin of Andre Derek Smith, deceased. On or about, November 1, 2017, the Davie Police Department responded to a shooting at the CVS Pharmacy located at: 4610 South University Drive, Davie, Florida, 33314, that resulted in the death of Andre Derek Smith. The undersigned, a resident of the state of Florida respectfully makes demand upon you pursuant to the Public Records Act, Florida Statutes § 119, a portion of which is set out below, for the production of the following described public records in your possession or control as custodian.

As you know any audio recording, video recording, and photographs are not subject to the general public records exception of an ongoing criminal investigation; and as such, we demand their immediate release to our clients, Andrea Goulbourne Smith and Derick Smith, Andre Derek Smith's next of kin.

Our office requests the following on behalf of our client:

1. Any and all records, reports, notes, materials, evidence, documents, video, audio recording, or statements pertaining to any incident involving the shooting of Andre Derek Smith by Matthew Jay Barry at CVS Pharmacy, on or about November 1, 2017, including but not limited to the following:
 - (a) Any records related to 911 calls placed regarding the incident.
 - (b) The dispatch log relating to the incident.
 - (c) All call logs for service.
 - (d) Any all arrest information, information pertaining to criminal charges.
 - (e) Any internal investigation report relating to the incident.
 - (f) A list of any evidence obtained related to this incident.
 - (g) Any inter-office communication relating to the incident.
 - (h) Any writing, audio or video relating to the incident.
 - (i) All radio communication.

Jasmine Rand, Esquire · Rand Law, L.L.C. · 2525 Ponce de Leon Blvd., Ste. 300, Miami, Florida 33134
(706) 424-1027 Cell · (305) 906-0040 Office · (305) 503-9235 Facsimile

- (j) All pictures or photographs.
 - (k) Any and all police chatter related to the incident.
 - (l) Any witness statement.
 - (m) Any graph, chart, writing, or illustration.
 - (n) The name of each officer that responded to and/or investigated the incident.
 - (o) Any and all medical records related to our client in your possession.
 - (p) An evidence list.
 - (q) Any and all information gathered from any cell phone, any social media, or any other device or technology application.
2. Any and all, document, information or thing related to the shooter, Matthew Jay Barry, in your possession, including any and all document and/or thing related to the subject incident and any prior criminal history.
3. A copy of any and all calls for service to CVS located at 4610 South University Drive, Davie, Florida, 33314, in your possession for the five years prior to this incident, including but not limited any document evidencing any and all crimes reported whether founded or unfounded at CVS.

Set out below are relevant portions of Florida Statutes § 119.07:


- (1)(a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.
- (1)(b) A person who has custody of a public record and who asserts that an exemption applies to part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.
- (1)(c) If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.
- (1)(d) If requested by the person seeking to inspect or copy the record, the custodian of public records shall state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.
- (1)(f) Even if an assertion is made by the custodian of a public records that a requested record is not a public record subject to public inspection or copying under this subsection, the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was served on or otherwise made to

the custodian of public records by the person seeking access to the record. If a civil action is instituted within a 30 day period to enforce the provisions of this section with respect to the requested record, the custodian of public records may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

- (4) The custodian shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law. If a fee is not prescribed by law, the following fees are authorized: up to 15 cents per one-sided copy for duplicated copies of not more than 14 inches by 8 1/2 inches.

If you have any questions or concerns regarding this request, please do not hesitate to contact Clara Rivero with the Baez Law Firm at (305) 999-5100 or via email at office@baezlawfirm.com or Jasmine Rand with Rand Law, L.L.C. at jaminerand@gmail.com. Thank you for your assistance in this matter.

Respectfully,

/s/Jasmine Rand 
Jasmine Rand, Esquire
RAND LAW, L.L.C.

/s/Jose Baez
Jose Baez, Esquire
BAEZ LAW FIRM

EXHIBIT B
TO THE COMPLAINT



Michelle Medina <michelle@baezlawfirm.com>

Public Records Request- Shooting of Andre Derek Smith

Jasmine Rand <jasminerand@gmail.com>

Mon, Nov 6, 2017 at 4:01 PM

To: denise_stockdale@davie-fl.gov, Jose Baez <jose@baezlawfirm.com>, Michelle Medina <michelle@baezlawfirm.com>

Good Afternoon Ms. Stockdale,

My name is Jasmine Rand and I represent the next of kin of Andre Derek Smith alongside Jose Baez, Esquire with the Baez Law Firm. I was directed by the Davie Police Department operator to email a public records request to your attention. Please see the attached public records request. A copy has been placed in the mail as well.

While we recognize many documents are withheld subject to an ongoing criminal investigation, the next of kin is entitled to any photograph, video, or audio recording depicting the killing of their son which includes the time period prior, during, and after the shooting. Our office has also requested a copy of any criminal history in Davie Police Department's possession related to the shooter Matthew Jay Barry.

Our client previously requested information from one of your officers and has not been allowed to review a copy of the audiovisual evidence that depicted the shooting. Our client would like to review this evidence immediately.

Please provide me with a time, location, and contact for our client to review said evidence tomorrow.

Thank you for your time and consideration.

Respectfully,**Jasmine Rand, Esquire****RAND LAW, L.L.C.**

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www.therandlawfirm.com



PRR- David Police Department.pdf
1508K



Michelle Medina <michelle@baezlawfirm.com>

Public Records Request- Shooting of Andre Derek Smith

Jasmine Rand <jasminerand@gmail.com>

Tue, Nov 7, 2017 at 2:59 PM

To: jose@baezlawfirm.com, michelle@baezlawfirm.com

Davie Police Department refused the records request.

Sent from my iPhone

Begin forwarded message:

From: Denise Stockdale <Denise_Stockdale@davie-fl.gov>**Date:** November 7, 2017 at 9:25:44 AM EST**To:** Jasmine Rand <jasminerand@gmail.com>**Subject:** Public Records Request- Shooting of Andre Derek Smith

I am in receipt of your public records request for the shooting of Andre Derek Smith on 11/01/17. The case number for this incident is 17-067092.

Nothing from the case is releasable yet as it is still an active investigation. The initial report has not been received in the Records Division. The report and any additional documentation is exempt from public disclosure per Florida State Statute 119.071(2) and 119.011(3) as it is part of an active criminal investigation.

Det. Eddie Velasquez is the detective assigned to this case. Once he advises the case is closed, the requested documents will be available.

If you would like to speak to Det. Velasquez, his telephone number is 954-693-8290.

Thanks

Denise

From: Jasmine Rand [mailto:jasminerand@gmail.com]**Sent:** Monday, November 06, 2017 4:01 PM**To:** Denise Stockdale <Denise_Stockdale@davie-fl.gov>; Jose Baez <jose@baezlawfirm.com>; Michelle Medina <michelle@baezlawfirm.com>**Subject:** Public Records Request- Shooting of Andre Derek Smith

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