

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

CABLE NEWS NETWORK, INC.; MIAMI
HERALD MEDIA COMPANY; and
SUN-SENTINEL COMPANY, LLC,

Petitioners,

v.

BROWARD COUNTY SHERIFF'S OFFICE; SCOTT ISRAEL,
in his official capacity as Broward County Sheriff; SCHOOL
BOARD OF BROWARD COUNTY; and ROBERT W. RUNCIE, in his
official capacity as Superintendent of Schools, Broward County,

Respondents.

Case No.: _____

**IMMEDIATE HEARING
REQUESTED PURSUANT TO
SECTION 119.11(1), FLA. STAT.**

**PETITION FOR ACCESS TO VIDEO RECORDINGS FROM THE EXTERIOR
CAMERAS OF MARJORY STONEMAN DOUGLAS HIGH SCHOOL**

Pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes, Petitioners Cable News Network, Inc., Miami Herald Media Company, and Sun-Sentinel Company, LLC (collectively, the "News Media Parties") file this petition for access to video recorded by exterior cameras at Marjory Stoneman Douglas High School (the "School") from the day of mass shooting -- which has shocked not only this community but the nation, sparking fervent discussion about school safety, gun violence, and gun safety. Specifically, the response of law enforcement officers during the shooting and immediately thereafter is of extreme public interest. Moreover, the details of actions by law enforcement officers -- in particular the armed school resource officer at the School -- have been publicly disclosed by Sheriff Scott Israel. Witnesses and other law enforcement agencies additionally have described the events shown on the video. The public, therefore, should be given the first-hand opportunity to review and evaluate the video and the actions of its government officials.

INTRODUCTION

1. On Thursday, February 22, 2018, Broward Sheriff Scott Israel prefaced his remarks at a televised news conference by stating he was providing “*information the public needed to know*” and then proceed to announce that not only did exterior video footage exist from the mass shooting at the School, but that an armed BSO deputy assigned to the school, Scot Peterson, “was absolutely on campus through this entire [horrific] event. He was armed, he was in uniform” *and* “remained outside for upwards of four minutes” while families lost fathers, sons, and daughters, and a community lost its innocence.

2. Sheriff Israel has publicly described *in detail* what the video shows about Deputy Peterson’s actions: he arrived at the west side of Building 12, took position, got on his radio, had a view of the western entry of Building 12, but never went in. Sheriff Israel has stated that Peterson should have gone in and “addressed the killer, killed the killer.” If he had done so, lives may have been saved.

3. News reports of eyewitness accounts also have described Deputy Peterson’s actions. One student reported said that Deputy Peterson was behind a stairwell wall, with his gun drawn, and pointing it at Building 12 while the shooting was in progress. Deputy Peterson reportedly did not enter the building, and instead was talking on his radio. Other news reports have quoted law enforcement sources as stating that there were multiple BSO deputies on the scene, who did not enter the building during the shooting -- which lasted at least six minutes, according to BSO.

4. Despite these detailed descriptions, and particularly of Deputy Peterson’s actions captured on the video, BSO and Broward County Public Schools (the “School District”) have refused to release a copy to the public. BSO has cited the following Chapter 119 exemptions as

justification for not disclosing the public record video footage: (1) the video reveals a security system plan; (2) the video is part of an active criminal investigation relating to the shooter Nikolas Cruz; and (3) the video is related to an internal affairs investigation of Deputy Peterson. None of these exemptions, however, justify or support concealing this video from the public. As detailed below, there is ample good cause to release this video.

5. First, there is a strong public interest in having the public -- and more specifically Florida citizens -- fully evaluate how first responders and police reacted during the most critical phases of this terrible tragedy. Even Sheriff Israel has conceded that this is information the public needs to know. Disclosing this video footage from exterior cameras (not the interior where the shooting occurred), lies at the core of understanding exactly how events unfolded and will provide critical insight into the propriety of the government's response.

6. The purpose of this action, therefore, is to obtain access to these important public records for evaluation of government behavior. Specifically, disclosure of the video will assist the public in, among other things, considering whether a different course of action may have lessened or averted the tragic outcome.

7. The video footage is a public record of the School District and should be disclosed. The School District has issued a public statement, however, advising that its video footage from the school surveillance system has been "removed from the District's possession through a search warrant" as part of the criminal investigation. This is a violation of the Public Records Act. The School should be required to demand, and BSO should be required to deliver, a copy of the video back to the School Board so that the School Board can comply with the legal requirement that it maintain and disclose its own public records.

8. The video should also be disclosed by BSO. The public records exemptions BSO

relies upon to withhold the records do not apply. Even if those exemptions were to apply, good cause exists for public disclosure.

9. Accordingly, the News Media Parties seek an order compelling BSO and/or the School Board to provide copies of all non-exempt portions of the video at issue after finding that good cause exists for its public release. In this regard, the News Media Parties also request an *in camera* inspection of the video to determine if and to what extent any exemptions cited by BSO may apply. Finally, the News Media request that this matter be set for expedited hearing pursuant to Section 119.11(1) of the Public Records Act.

10. All conditions precedent to this action have occurred or have been excused or waived.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to Article V, Section 5(b) of the Florida Constitution and Section 119.11, Florida Statutes.

12. Venue is appropriate in Broward County because the records at issue are located here.

PARTIES

13. Petitioners are local and national media that have, and continue to, cover the mass shooting at the School. The News Media Parties include:

- a. Cable News Network, Inc. (“CNN”);
- b. Miami Herald Media Company (publisher of the Miami Herald); and
- c. Sun-Sentinel Company, LLC (publisher of the South Florida Sun Sentinel).

14. In covering this attack, these parties continue to rely upon public records as principal sources for newsgathering, including the video footage from the School's exterior cameras.

15. The Broward County Sheriff's Office is an agency subject to the Florida Public Records Act. Sheriff Scott Israel is the Sheriff of Broward County and is sued in his official capacity. They are collectively referred to in this petition as "BSO."

16. The School Board of Broward County is an agency subject to the Florida Public Records Act. Robert W. Runcie is Superintendent of Broward County Public Schools, and is sued in his official capacity. They are collectively referred to in this petition as the "School District."

17. The School District created the video and is the proper and lawful custodian of this public record. BSO currently has custody of the video.

FACTUAL BACKGROUND

Florida's Safest City Becomes Home to Deadly Tragedy.

18. As most Americans are by now aware, on the afternoon of February 14, 2018 at Marjory Stoneman Douglas High School in Parkland, Florida, Nikolas Cruz shot and killed 17 people, including students and teachers, and wounded many others -- all while a BSO deputy, and the school's resource, officer remained armed and outside. The incident now stands as one of the deadliest mass shootings in modern United States history.

19. The Parkland tragedy is, unfortunately, the latest in a series of mass shootings that have befallen this country over the last several years. Combined with the substantial death toll, Cruz's targeting of a school of his former peers has further stoked national debate regarding,

among other things, preventing school shootings, enhancing early intervention, securing schools, and gun control. It has also garnered debate over how to properly respond to such attacks.

20. The events have also, among other things, elicited sharp responses from the federal executive branch (including a visit by President Trump and a forum at the White House) and members of Congress. In fact, President Trump specifically reacted to the information in the video the News Media Parties are seeking. State and local reaction has been robust as well.

The Media's Public Records Requests and the BSO Response

21. In an attempt to better understand how the shooting unfolded and how BSO personnel responded to the incident, various media organizations made public records requests for the video footage from the exterior cameras at the School. Those requests were, and remain, denied.

22. In this regard, BSO maintains that the requested records are exempt from disclosure because they are related to: (a) a security system plan (Fla. Stat. § 119.071(3)); (b) an active criminal investigative information (Fla. Stat. § 119.071(2)(c)1.); and (c) an active internal affairs investigation of Deputy Peterson (Fla. Stat. § 112.533(2)(a)). The cited statutory exemptions are stated as the basis for withholding the requested records in their entirety.

Disclosures and Official Calls for Greater Transparency

23. In the wake of the shooting, certain information has been made public that bears directly upon the validity of any exemptions that might be applicable in this case.

24. Substantial information about the shooter, Nikolas Cruz, has already been made public and he has confessed to the crimes. His actions are not disputed.

25. Sheriff Israel disclosed detailed information about the actions of Deputy Peterson depicted on the video, including his specific non-responsiveness while the shooting was occurring.

26. The School District has announced that it wants to tear down the school building where the shooting occurred and rebuild it, thereby eliminating any possible concerns that releasing the video will disclose security features at the School.

27. School safety procedures are under critical review at all levels of government, as are the actions of first responders.

28. Deputy Peterson has resigned and retired from BSO in the wake of the shooting and as a direct result of BSO's investigation into his actions.

29. In sum, extensive information already has been publicly disclosed with respect to the Parkland shooting. Moreover, it is clear that there is significant public interest in the disclosure of the exterior camera video. Both the News Media and the government appear to agree on this point. Yet BSO continues to cite public records exemptions that do not apply, or at best only apply in limited situations. A wholesale withholding of these critical records, however, is inappropriate.

LEGAL ARGUMENT

30. The exterior camera video recordings are public records as defined in Section 119.011(12), Florida Statutes, and as interpreted by Florida courts, and are encompassed within Article I, Section 24 of the Florida Constitution.

31. The constitutional right of access to public records applies to "any public body, officer, or employee of the state, or persons acting on their behalf . . ." Art. I, § 24, Fla. Const.

32. BSO is a public agency under Section 119.011(2), Florida Statutes, and has a legal obligation to provide access to non-exempt public records upon request.

33. The School District is an agency under Section 119.011(2), Florida Statutes, and has a legal obligation to provide access to non-exempt public records upon request. The School District has unlawfully transferred the video to BSO without maintaining a copy.

34. Under the Public Records Act, records made or received in connection with public agency business are presumptively open, § 119.01(1), Fla. Stat., although the Legislature has created certain, narrow exemptions.

35. Here, the videos sought are public records, to which no exemption can validly be applied to shield disclosure. If the records are exempt under Section 119.071(3), good cause exists for their release because, among other things, the contents of the video already have been publicly and widely disclosed; Building 12 at the School is going to be torn down and no longer used as a school meaning that the videos cannot possibly disclose “security system plans;” and the BSO resource officer’s actions (as depicted on the video) are the subject of extensive public debate by local, state and national government officials.

REQUEST FOR *IN CAMERA* REVIEW

36. In order to (a) determine whether and to what extent the exterior camera video recordings implicate the exemptions advanced by Respondents, and (b) if necessary, conduct a good cause analysis, the News Media Parties request that this Court conduct an *in camera* review of the records. Complete and proper analysis in part hinges on the particular information contained in records. See In re Records of DCF, 873 So. 2d 506, 513 (Fla. 2d DCA 2004). Indeed, “[i]t is impossible to judge the potential impact of the disclosure of information contained in records without knowing what the information is.” Id. at 514.

37. Respondents can assist in the process by grouping or categorizing the records and highlighting purportedly sensitive portions for the Court's review. Alternatively, Respondents could create a log that identifies purportedly sensitive portions of the recordings but does not disclose exempt information.

38. Such an inspection is necessary for this Court to properly exercise its authority under Chapter 119, Florida Statutes.

REQUEST FOR EXPEDITED HEARING

39. Section 119.11, Florida Statutes, provides that courts are to set immediate hearings in actions to enforce the provisions of the Public Records Act and are to give such cases priority over other pending cases. See also Salvador v. Fennelly, 593 So. 2d 1091, 1094 (Fla. 4th DCA 1992), disapproved on other grounds, Abdool v. Bondi, 141 So. 3d 529 (Fla. 2014) (emphasizing the priority of Public Records Act cases and the importance of expediency).

40. As the Florida Supreme Court has recognized: "News delayed is news denied." State ex. Rel. Miami Herald Publ'g Co. v. McIntosh, 340 So. 2d 904, 910 (Fla. 1976). The News Media Parties, therefore, request an immediate hearing and that this case be given priority over other pending cases.

REQUEST FOR ATTORNEYS' FEES

41. Section 119.12, Florida Statutes, provides that "[i]f a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees."

42. The News Media Parties have retained the undersigned counsel in this matter and are obligated to pay to counsel attorneys' fees, costs, and expenses in connection with this matter.

BENCH TRIAL DEMAND

43. The News Media Parties request a bench trial on all issues so triable.

RELIEF REQUESTED

WHEREFORE, the News Media Parties request that this Court:

- (a) Set an immediate hearing pursuant to Section 119.11, Florida Statutes, on this matter;
- (b) Find that the records at issue are public records subject to disclosure under the Public Records Act, to which no valid exemption applies;
- (c) Find that good cause exists for release of the records at issue;
- (d) Order BSO to immediately provide all records at issue to the News Media Parties;
- (e) Award the News Media Parties their reasonable attorneys' fees, costs, and expenses incurred in this action, as provided in Section 119.12, Florida Statutes; and
- (f) Grant such further relief as the Court deems just and proper.

Dated: February 26, 2018.

THOMAS & LOCICERO PL

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