



DISTRICT COURT



FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

APR 13 2018

RICK WARREN  
COURT CLERK

SEVENTH JUDICIAL DISTRICT, STATE OF OKLAHOMA

OKLAHOMA COUNTY COURTHOUSE  
OKLAHOMA CITY, OKLAHOMA 73102

LISA TIPPING DAVIS  
DISTRICT JUDGE

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April 13, 2018

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RE: *Ziva Branstetter, et al v. Mary Fallin, et al*  
Case No. CV-2014-2372

Dear Counselors:

The Court, pursuant to District Court Rule 4(h) and by agreement of the parties, will rule on the pending motions based on the briefs submitted in the captioned matter without a hearing. Before the court are the following motions:

- 1) Defendant Governor Mary Fallin's Motion for Summary Judgment, Statement of Material and Uncontroverted Facts and Brief in Support filed herein on November 30, 2017; Plaintiffs' Opposition to Defendant Governor Mary Fallin's Motion for Summary Judgment filed herein on December 29, 2017;
- 2) Defendant Michael C. Thompson's Motion for Summary Judgment and Brief in Support filed herein on December 1, 2017; and Plaintiffs' Opposition to Defendant Commissioner Michael Thompson's Motion for Summary Judgment filed herein on December 29, 2017
- 3) Plaintiffs' Motion for Summary Judgment and/or Summary Disposition as to Governor Mary Fallin's Failure to Provide "Prompt, Reasonable" Access to Public Records, volume one and two, filed herein on December 1, 2017;

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Defendant Governor Mary Fallin's Response to Plaintiffs' Motion for Summary Judgment filed herein on December 29, 2017; and, Plaintiffs' Reply in Support of their Motion for Summary Judgment and/or Summary Disposition as to Governor Mary Fallin's Failure to Provide "Prompt, Reasonable" Access to Public Records filed herein on January 30, 2018.

- 4) Plaintiffs' Objections to and Motion to Strike Portions of the Affidavit of Steve Mullins filed herein on January 30, 2018; and, Defendant Governor Mary Fallin's Response to Plaintiffs' Motion to Strike and Objections to an Exhibit Used by this Defendant in its Response to Plaintiffs' Motion for Summary Judgment filed herein on February 8, 2018.

and

- 5) Plaintiffs' Motion for Summary Judgment and/or Summary Disposition as to Commissioner Michael Thompson's Failure to Provide "Prompt, Reasonable" Access to Public Records filed herein on December 1, 2017; Defendant Commissioner Michael C. Thompson's Response to Plaintiffs' Motion for Summary Judgment filed herein on December 29, 2017; and, Plaintiffs' Reply in Support of their Motion for Summary Judgment and/or Summary Disposition as to Commissioner Michael Thompson's Failure to Provide "Prompt, Reasonable" Access to Public Records filed herein on January 30, 2018.

The Court has read, reviewed and considered the pleadings and the exhibits attached thereto as set forth above in 1) through 5). The parties are referred to as follows: Plaintiffs Ziva Branstetter ("Branstetter") and BH Media Group Inc. d/b/a Tulsa World ("Tulsa World") (collectively "Plaintiffs"); Defendant Mary Fallin, in her official capacity as Governor of the State of Oklahoma ("Governor"); and Defendant Michael C. Thompson, in his official capacity as Commissioner of the Oklahoma Department of Public Safety ("Commissioner").

The parties filed cross motions for summary judgment and based on the review by the Court, it appears there are some core facts all parties agree are undisputed. While there are some nuances in dispute, it appears the controlling facts are not in controversy. These core uncontroverted facts are as follows:

- 1) On May 1, 2014, Branstetter served an open records request on the Governor.
- 2) On May 5, 2014, Branstetter served an open records request on the Commissioner. On September 4, 2014, Branstetter served an additional open records request on the Commissioner.

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- 3) On December 1, 2014, Plaintiffs initiated this action for violation of the Open Records Act. At that time, no records had been produced from either Defendant.
- 4) Numerous motions and pleadings were filed in the captioned matter.
- 5) Pursuant to discovery in the captioned matter and in response to the open records request, on March 13, 2015, the Commissioner's office produced some records to Plaintiffs. This was about 11 months after the initial request. E-mails were produced from the Commissioner's office for the first time on May 6, 2016. This was about 24 months after the initial request. Additional documents were produced on later dates.
- 6) Pursuant to discovery in the captioned matter and in response to the open records request, on October 8, 2015, the Governor's office produced records to Plaintiffs. This was about 17 months after the initial request. Additional documents were produced on later dates.
- 7) Documents were produced for in camera reviews and privilege logs were all produced and examined after the initial documents were produced as part of the civil lawsuit.
- 8) There has now been substantial compliance with the Plaintiffs' open records requests to Defendants and no issues remain with respect to the documents which were produced.

The parties recite and the court record reflects a contentious and hard fought lawsuit since this case was initiated in 2014. While Plaintiffs' requests may not have been formally denied in this matter, it is uncontroverted that no documents were produced prior to the lawsuit being filed. At the core of this controversy is whether a delay in producing records in response to an open records request of over a year and a half to two years is a failure to provide "prompt, reasonable" access to the records. It appears Defendants concede the delays in producing the documents in this case resulted in a response that was not prompt. The Court declines to opine as to the appropriate process or procedure for responding to an open records request or to set forth a hard and fast rule or a specific time frame for production of documents pursuant to an open records request; however, in this case, neither the delays nor the process which resulted in the delays in excess of 17 months was prompt or reasonable.

The Open Records Act, 51 O.S. §24.1, *et seq.*, expresses a strong public policy regarding access to public records. 51 O.S. §24A.2. "(I)t is the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government." *Id.* The Open Records Act fixes a mandatory duty of public officials by providing that officials "must provide prompt, reasonable access" to its records. 51 O.S. §24A.5(6). "The Legislature's emphatic message to government agencies is, unless otherwise specifically excluded, the public must have prompt and reasonable access to records." *Oklahoma Ass'n of Broadcasters, Inc. v. City of Norman, Norman*

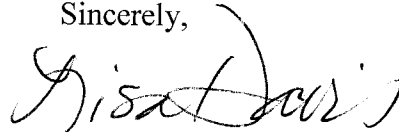
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*Police Dep't*, 2016 OK 119, citing *Fabian and Assocs. v. State*, 2004 OK 67 and *City of Lawton v. Moore*, 1993 OK 168.

Based on the review by the Court, the Court grants the Governor's and the Commissioner's Motions for Summary Judgment with respect to injunctive relief, writ of mandamus and writ of prohibition. The Court overrules the Governor's and the Commissioner's Motions for Summary Judgment with respect to the request for declaratory relief. The Court grants the Plaintiffs' Motions for Summary Judgment for declaratory relief and finds the Governor and the Commissioner violated the Open Records Act by failing to provide prompt and reasonable access to the records requested by Plaintiffs pursuant to the Open Records Act. Based on the Court's rulings herein, the Court overrules Plaintiffs' request to strike portions of the affidavit.

Plaintiffs' counsel should timely submit an Order reflecting the Court's ruling in accordance with Local Court Rule 11

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Tipping Davis". The signature is fluid and cursive, with a large loop at the end.

Lisa Tipping Davis  
District Judge