

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. ____

DIVISION ____

SECTION: ____

JOHN SIMERMAN

VERSUS

COL. KEVIN REEVES, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT AND
CUSTODIAN OF RECORDS FOR THE LOUISIANA STATE POLICE

FILED: _____

DEPUTY CLERK

VERIFIED PETITION FOR WRIT OF MANDAMUS

NOW INTO COURT, through undersigned counsel, comes the Petitioner herein, John Simerman (“Petitioner”), who files this Verified Petition for Writ of Mandamus, and who, with respect to same, does hereby allege, aver, espouse, attest, and state as follows, to-wit:

1.

The Petitioner is an individual of the age of majority, a resident of New Orleans, Louisiana, and a reporter for *The Advocate* newspaper.

2.

Made Defendant/Respondent herein is Col. Kevin Reeves, in his capacity as Superintendent and Custodian of Records for the Louisiana State Police, State of Louisiana, enjoying the right to sue and be sued in this Court.

3.

On November 17, 2018 at approximately 12:25 p.m. Chantelle Davis, an off-duty New Orleans Police Officer, was stopped by Louisiana State Police Trooper Jared D. Taylor while Davis was driving eastbound on U.S. Highway 90 in Jefferson Parish at an alleged 23 miles over the speed limit.

4.

On January 10, 2019, the Petitioner did make a public records request for the following public records relating to the November 17, 2018 traffic stop of Officer Davis by the Louisiana State Police:

All gists, reports, memos, citations, video footage, correspondence or other records related to a traffic stop that took place on Nov. 17, 2018 on US 90B east involving vehicle operator Chantelle Davis.

The request was made to State Trooper First Class Melissa Matey, the public information officer for Troop B (Kenner, La.) of the Louisiana State Police. *See Exhibit A.*

5.

The Petitioner received a response from Faye Morrison, Assistant Secretary of the Department of Public Safety, Office of Legal Affairs on January 17, 2019 which provided a response as to some of the records, but, particularly as relevant to the matter before this Court, denied the Petitioner's request for Trooper Taylor's body-worn camera footage:

Please be advised your request for video/body cam footage has been denied under La. R.S. 44:3(A)(8)(a)(b).

See Exhibit B.

6.

The Petitioner wishes to review the body camera footage as the matter involves a traffic stop of a New Orleans Police Officer, Chantelle Davis, in which some controversy ensued as to her treatment of Trooper Taylor. Of further note, Trooper Taylor's ticket was voided after his boss spoke with Ofc. Davis' superior, Nicholas Gernon, at NOPD. *See Exhibit C.*

7.

The documents produced by the Louisiana State Police reveal that in the video requested, the interaction took place on the side of a public street (US-90) and that it is apparent that Officer Davis "had an attitude ... shooed [Trooper Taylor] disrespectfully," "volunteered that she was NOPD" and that Officer Davis was "dismissive, arrogant and disrespectful" toward the Trooper. *See, Exhibit C.*

8.

The Petitioner avers that his reporting on this matter is of public interest in the operation of law enforcement in the state of Louisiana, and that Officer Davis is currently under investigation by the Public Integrity Bureau of the New Orleans Police Department as is her supervisor, NOPD 8th District Commander Nicholas Gernon.

9.

In further correspondence with undersigned counsel, attorneys for the Defendant made it clear that they believed that production of the body camera footage would be a violation of Officer Davis' reasonable expectation of privacy as spelled out in La. R.S. 44:3(A)(8), which exempts:

(8) Video or audio recordings generated by law enforcement officer body-worn cameras that are found by the custodian to violate an individual's reasonable expectation of privacy.

(a) A body-worn camera is a camera worn on an individual law enforcement officer's person that records and stores audio and video.

(b) Body-worn camera video or audio recordings that are determined by the custodian to violate an individual's reasonable expectation of privacy shall be disclosed upon a determination and order from a court of competent jurisdiction pursuant to R.S. 44:35.

(c) All costs of production associated with a court-ordered disclosure shall be set by the court.

(d) Notwithstanding any provision of this Chapter to the contrary, body-worn camera video or audio recordings generated while the law enforcement officer is not acting in the scope of his official duties shall not be subject to disclosure when the disclosure would violate a reasonable expectation of privacy.

10.

Petitioner avers that this language relating to the reasonable expectation of privacy cannot apply to the instant matter as there is no right to privacy on a public street in accordance with years of precedent. *Jaubert v. Crowley Post-Signal, Inc.*, 375 So. 2d 1386, 1391 (La. 1979); *Stern v. Doe*, 2001-0914 (La. App. 4 Cir. 12/27/01), 806 So. 2d 98, 102

11.

A reasonable expectation of privacy requires that an “individual has an actual or subjective expectation of privacy, but whether that expectation is also of a type which society at large is prepared to recognize as being reasonable.” *Angelo Iafrate Const., L.L.C. v. State ex rel. Dep't of Transp. & Dev.*, 2003-0892 (La. App. 1 Cir. 5/14/04), 879 So. 2d 250, 255, *writ denied sub nom. Angelo Lafrate Const., L.L.C. v. State ex rel. Dep't of Transp. & Dev.*, 2004-1442 (La. 9/24/04), 882 So. 2d 1131; *Skamangas v. Stockton*, 37,996 (La. App. 2 Cir. 3/5/04), 867 So. 2d 1009, 1014, *on reh'g* (Apr. 1, 2004), *writ denied*, 2004-1099 (La. 6/25/04), 876 So. 2d 839, *and writ denied*, 2004-1125 (La. 6/25/04), 876 So. 2d 843

12.

Petitioner avers that there is no reasonable expectation of privacy present as the video occurred on a public street and that the subject of the video is herself a police officer, and the matter is one of public concern.

13.

A writ of mandamus, which will “compel the performance of a ministerial duty required by law,” La. C.C.P. Art. 3863, is appropriate to compel Defendant to abide by his statutory duty to produce the records, in whole or in part, made subject of Petitioner’s request.

14.

Petitioner respectfully requests this Honorable Court review the video *in camera* and/or order production of the request immediately.

15.

It is the law of Louisiana that: “No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.” La. Const. Art. 12, Sec. 3.

16.

Furthermore, “Providing access to public records is a responsibility and duty of the appointive or elective office of a custodian and his employees.” La. Rev. Stat. Ann. § 44:31.

17.

“All persons and public bodies having custody and control of any public record” are required by law to preserve the public record “for a period of at least three years.” La. Rev. Stat. Ann. § 44:36.

18.

A “recording” is defined as a public record in La. Rev. Stat. Ann. § 44:1(A)(2)(a).

19.

A custodian of Public Records has three days, exclusive of Saturdays, Sundays and legal public holidays, to produce public records. La. Rev. Stat. Ann. § 44:33.

20.

The exceptions cited by the Defendant do not apply to the instant request. La. Rev. Stat. Ann. § 44:3(A)(8) was amended into the law in 2016 to protect “private property or a witness who needs protection.”¹ SB 398, which created the law cited by the Defendant, was merely a statement of “the law currently” in the state of Louisiana—that if a right to privacy outweighs the public’s right to know, the document (or video) would not be produced.²

21.

Further legislative testimony clarified that the intent of the amendment was to protect, as Alexandria Police Chief Lambert said, “Data that is captured in a non-criminal investigative setting, where there is no pending criminal case. The bill allows us to screen those and make an objection on behalf of the privacy interest of those depicted.”³ In the instant matter, a criminal or adverse action (in the form of a traffic ticket) was at issue and later dismissed under circumstances which warrant further investigation.

¹ Legislative Debate, April 19, 2016 Senate & Governmental Affairs Committee: available at http://senate.la.gov/video/videoarchive.asp?v=senate/2016/04/041916JUDB_0.

² Legislative Debate, April 25, 2016 Senate & Governmental Affairs Committee: available at http://senate.la.gov/video/videoarchive.asp?v=senate/2016/04/042616JUDB_0

³ Legislative Debate, May 18, 2016 House & Governmental Affairs Committee: available at http://house.louisiana.gov/H_Video/VideoArchivePlayer.aspx?v=house/2016/may/0518_16_HG

22.

There is no right to privacy present in the records as there is a significant public interest in the detaining and investigation of a police officer, and redaction can effectively deal with any privacy concerns.

23.

The Petitioner, through counsel, made demand upon the Defendant requesting that the Defendant reconsider his wholesale denial of the request, but the Defendant refused to do so.

24.

The Louisiana Public Records Law provides that any person who is denied the right to inspect or copy a record “may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney's 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.” La. Rev. Stat. Ann. § 44:35(A).

25.

Suits filed under the Public Records Law “shall be tried by preference and in a summary manner.” La. Rev. Stat. Ann. § 44:35(C).

26.

As stated in La. Rev. Stat. Ann. § 44:31(B)(3), the “burden of proving that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian.”

27.

The Louisiana Public Records Law at La. R.S. 44:35(B) allows for *in camera* inspection of documents in controversy, and the Petitioner requests such an inspection.

28.

The Louisiana Supreme Court has held that the Public Records Law should always 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.” *Title Research Corp. v. Rausch*, 450 So.2d 933, 936 (La. 1984).

29.

Petitioner asserts that the outstanding request is appropriately narrow and well within the faculties and capability of the Defendant to answer.

30.

The Defendant has asserted that Ofc. Davis' drivers license is present in the video, and has stated that it will not consider redaction of that alleged private information as an alternative to wholesale denial.

31.

Petitioner avers that the Defendant has arbitrarily and capriciously withheld the records sought and has arbitrarily and unreasonably failed to respond to the request as contemplated by La. Rev. Stat. Ann. § 44:32. Petitioner therefore requests that this Court award actual damages and civil penalties in accordance with La. Rev. Stat. Ann. § 44:35(E).

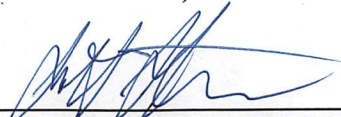
32.

Petitioner furthermore avers that upon judgment of this Honorable Court, he should be awarded reasonable attorneys' fees and other costs of litigation under La. Rev. Stat. Ann. § 44:35(D) (“[a prevailing petitioner] *shall be awarded* reasonable attorney's fees and other costs of litigation.”) [*Emphasis added.*]

WHEREFORE, in consideration of the above and foregoing Petition for Writ of Mandamus, together with the facts stated herein, the exhibits appended hereunto, and the law and equities applicable in the premises, Petitioner respectfully moves this Honorable Court to grant the relief as prayed for in his Petition and order Defendant to produce copies of the records sought. Petitioner further (separately and/or conjunctively) prays for this Honorable Court to “order the issuance of an alternative writ directing the defendant to perform the act demanded or to show cause to the contrary,” in accordance with Louisiana law. Petitioner finally prays for civil penalties for arbitrary and/or capricious failure to produce the records, any and all equitable relief as is available, all costs of this proceeding, and attorneys' fees as provided for under the Louisiana Public Records Law, as well as all other various relief to which Petitioner is entitled.

Respectfully Submitted,

STERNBERG, NACCARI & WHITE, L.L.C.



SCOTT L. STERNBERG (#33390)
MICHAEL FINKELSTEIN (#35476)
DAVID LaCERTE (#32535)
643 Magazine Street | Suite 402
New Orleans, Louisiana 70130
Telephone: (504) 324-2141 | Fax: (504) 534-8961
scott@snw.law | michael@snw.law | david@snw.law
Counsel for Petitioner, John Simerman

PLEASE SERVE:

Col. Kevin Reeves

Custodian of Records

Louisiana State Police

7919 Independence Blvd.

Baton Rouge, LA 70806

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FILED: _____

DEPUTY CLERK

STATE OF LOUISIANA


PARISH OF ORLEANS

BEFORE ME, the undersigned Notary, personally came and appeared:

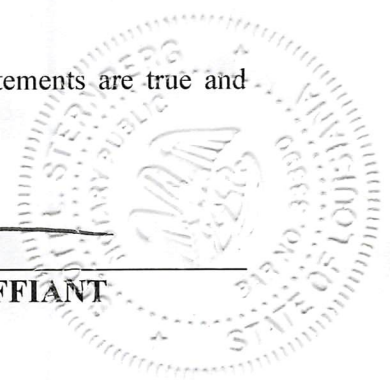
JOHN SIMERMAN

Who, after being duly sworn, deposed and stated:

1. He is an individual of the age of majority and domiciled in the Parish of Orleans, State of Louisiana;
2. He is a Reporter for *The Advocate* newspaper;
3. He is the requestor of the public records sought in the above-captioned case;
4. He has read the Petition in the above-captioned case and is familiar with the facts underlying the allegations contained therein based on his personal knowledge;
5. All of the allegations contained in the Petition and the foregoing statements are true and correct to the best of his knowledge, memory, information, and belief.



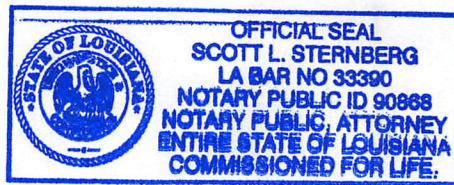
 JOHN SIMERMAN, AFFIANT



SWORN TO AND SUBSCRIBED
 BEFORE ME THIS 8th DAY OF
February, 2019.



 NOTARY PUBLIC



19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

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FILED: _____

DEPUTY CLERK

ORDER

Considering the Petition for Writ of Mandamus filed herein on behalf of Petitioner John Simerman;

IT IS HEREBY ORDERED that the Defendant, Col. Kevin Reeves, In his Official Capacity as Superintendent and Custodian of Records for the Louisiana State Police, be served with the foregoing Petition and a copy of this Order, and that an alternative writ of mandamus shall issue herewith, directing and compelling Defendant to immediately produce the public records requested, or show cause to the contrary.

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

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

Baton Rouge, Louisiana, this _____ day of _____, 2019.

JUDGE

PLEASE SERVE:

Col. Kevin Reeves
Custodian of Records
Louisiana State Police
7919 Independence Blvd.
Baton Rouge, LA 70806

The New Orleans Advocate
840 St. Charles Ave.
New Orleans, LA 70130

Jan. 10, 2019

State Trooper First Class Melissa Matey
Public Information Officer -Troop B
Louisiana State Police
2101 I-10 Service Rd.
Kenner, LA 70065

re: Records related to 11/17/18 traffic stop

Re: Request for Public Records

This letter is a public records request made pursuant to the Louisiana Public Records Act, Louisiana Revised Statute section 44:1, *et seq.*

I am requesting permission to review the following records in LSP's possession:

- All gists, reports, memos, citations, video footage, correspondence or other records related to a traffic stop that took place on Nov. 17, 2018 on US 90B east involving vehicle operator Chantelle Davis.

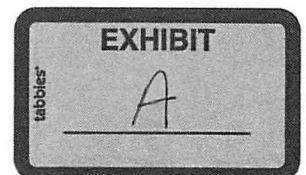
As you know, the Public Records Act requires that public records be provided for inspection and, if requested, copying within, at most, three days. If any of the records do not exist or will not be provided, you must notify me within, at most, three days regarding the reason(s) for the delay or refusal.

If you have any questions about this request, or need additional information in determining what records I am requesting, please call me on my cell phone at 504.343.9307. I can also be reached at jsimerman@theadvocate.com.

I look forward to hearing from you soon.

Sincerely,

John Simerman
Staff writer





JOHN BEL EDWARDS
GOVERNOR

KEVIN W. REEVES, COLONEL
DEPUTY SECRETARY

State of Louisiana
Department of Public Safety and Corrections
Public Safety Services

January 17, 2019
OLA/FDM/19-22000

Mr. John Simerman

Via Email: jsimerman@theadvocate.com

RE: Public Records Request –

All gists, reports, memos, citations, video footage, correspondence or other records related to a traffic stop that took place on November 17, 2018 on US 90B east involving vehicle operator Chantelle Davis

OLA File No. 061408

Dear Mr. Simerman:

In response to your public records request regarding the above captioned matter, please be advised that LSP maintains 4 pages of documents that are responsive to your request. The documents are available at a cost \$0.25 per page, for a total of \$1.00. Please forward a check or money order for \$1.00 made payable to Louisiana State Police to my attention at Office of Legal Affairs, P.O. Box 66614, Slot B-4, Baton Rouge, LA 70896.

Please be advised your request for video/body cam footage has been denied under La. R.S. 44:3(A)(8)(a)(b).

If you have any questions or concerns, please feel free to contact me at (225) 925-6103 or via email at faye.morrison@la.gov.

With kind regards, I am,

Sincerely,

Faye Morrison, Assistant Secretary
DPS, Office of Legal Affairs

COURTESY • LOYALTY • SERVICE
"An Equal Opportunity Employer"
P.O. BOX 66614, BATON ROUGE, LOUISIANA 70896

DPSSP 4117



LOST OR DAMAGED TRAFFIC CITATION(S)

TO: TROOP COMMANDER or SHIFT SUPERVISOR

On 11/17/18 ^{TROOP:} it was necessary for me to void traffic citation(s)
DATE

number(s) 3846649

Due to NO PD - TRAFFIC STOP - Charelle Davis

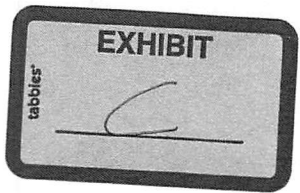
Matter handled w/ Commander Nick Genovese

Cent DPT 7831
OFFICER'S SIGNATURE

I certify that the above citation(s) were voided for the above stated reason(s).

TROOP COMMANDER OR SHIFT SUPERVISOR _____ DATE _____

DPSSP 3132 (R 8/88)



**OFFICE OF STATE POLICE
UNIFORM TRAFFIC SUMMONS/COMPLAINT AFFIDAVIT**

TICKET/TROOPER INFO:			
Ticket Number: 3346649 <input checked="" type="checkbox"/> Voided Trooper: Taylor, Jared D. Data #: 2887 Troop: 8 Duty Status: A			
LOCATION INFO:			
Parish		Court:	
INCIDENT INFO:			
Date Issued:	Time Issued:	Date Entered: 12/21/2018	
First Name:	Middle Initial:	Last Name:	Suffix:
DOB:	OLN: State: LA		DL Picked Up: <input type="radio"/> Yes <input checked="" type="radio"/> No
Hwy Type:	Route# Street Name:		
Intersection: (optional) :			Mile Post:
VIOLATION INFO:			
Charge:		Speed: Zone:	<input type="checkbox"/> Crash
DWI Offense: <input type="radio"/> Yes <input checked="" type="radio"/> No			
COMMENTS:			
Ticket voided per B-1. Spoke with Capt. from NO about his deputy. A copy of the traffic stop attached to voided ticket. 122118 mss			

Save & :

History
Log
Mindy Sadowski - 12/21/2018 10:12:15 AM

Printed:



DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS
OFFICE OF STATE POLICE

UNIFORM TRAFFIC SUMMONS/
COMPLAINT AFFIDAVIT

State of Louisiana

Parish of Jefferson SS (A) 2nd Parish Court

The undersigned being duly sworn upon his oath deposes and says:

On the 17 day of November 2014 at 1235 hrs.

Name Chantelle Davis

Address [REDACTED]

City Marrero State LA Zip 70072

DOB [REDACTED] Race B Sex F Ht 53

CLN [REDACTED] State LA Class E

<input type="checkbox"/> Carrying Haz Mat	<input type="checkbox"/> Comm. Veh	<input type="checkbox"/> COL	<input checked="" type="checkbox"/> Inj Child	<input type="checkbox"/> D.L. Picked up for Bond	<input type="checkbox"/> Prop Crash	<input type="checkbox"/> Inj Crash	<input type="checkbox"/> Fatal Crash
<input type="checkbox"/> Bus 15 or more Passengers							RCN

Underlying Operated Year 2014 Make Miss Type 9D Color White

Veh. Lic. [REDACTED] State LA Year 20

VIN [REDACTED]

Location US 90B E 1B MP # 72

And did commit the following offense(s) in violation of Louisiana Revised Statute

Speeding 83 M.P.H. in a 60 Zone Radar/Laser 1123

No.	Title / Section (Describe)
1	<u>32163 Speeding</u>
2	
3	

The undersigned authority further states that he has just and reasonable grounds to believe and state below that the above committed the offense(s) herein set forth contrary to law of the State of Louisiana (insert case name) and provided and assured the peace and safety of the community.

Notary Signature [Signature] DATA # [REDACTED]

Sworn to before me this [REDACTED] day of [REDACTED] 20[REDACTED]

NOTARY OR EX OFFICIO NOTARY

Court Appearance	<input type="checkbox"/> Juv	<input type="checkbox"/> Upon Notice	<input type="checkbox"/> Booked	<input type="checkbox"/> No Court Date Issued Contact Agency Below
------------------	------------------------------	--------------------------------------	---------------------------------	--

Date 2/25/14 Time 5:00p M. Phone (504) 364-2800

At Kathey P Long Ave City Gretna LA

I understand the terms and conditions of the summons and promise to appear at the time and place shown above. Failure to appear will be cause for the suspension of my driver's license and the imposition of additional fines and/or fees by the Louisiana Department of Public Safety and Corrections.

Signature [Signature] SIGNATURE IS NOT AN ADMISSION OF GUILT

STREASD/UB/ass going to LSU game; attitude during stop. Show'd me camera & said 'write me my ticket'

DPSSP 3101 R (Rev. 01/03)

B
3846649
A

Davis
Chantelle

(14)

From:
Sent:
To:
Subject:

Jay Cripple
Friday, November 30, 2018 3:38 PM
Donovan Archote
Taylor's Video (Davis/NOPD)

I reviewed the video for the complaint on Taylor from the NOPD officer. In my humble opinion, she handled the whole thing wrong. Here are the highlights;

- He stopped her properly, introduced himself and was polite.
- She exited with phone in hand texting, and texted the whole stop.
- She immediately had an attitude, tried to control the stop, volunteered that she was NOPD, challenged Taylor on where he told her to stand, shooed him disrespectfully and ordered him to write the ticket so she could go.
- Complainant stated she was worried for her safety on the shoulder, yet doesn't once look up from her phone toward traffic and never looks even slightly worried about being outside her car.
- Taylor was not rude or discourteous even though she argued and tried to question him as if he was the one that was wrong.

Seems to me that she talked herself into a ticket by being dismissive, arrogant and disrespectful. I added a Temporary Folder on the share drive for you to review the video. It was too large to send by email. We can delete the file after it's viewed if you wish.

Jay

Lt. Jay J. Cripple
Troop B
2101 I-10 Service Road
Kenner, LA 70065