

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

_____ DIVISION

MEGAN TOLLETT

PLAINTIFF

v.

No.

**MIKE BEEBE,
Governor of the State of
Arkansas**

DEFENDANT

**FREEDOM OF INFORMATION ACT COMPLAINT
AND REQUEST FOR A HEARING**

Comes now the Plaintiff Megan Tollett and for her Complaint for Violation of the Arkansas Freedom of Information Act (FOIA), through her attorneys RITTER LAW, alleges the following.

I

JURISDICTION, PARTIES AND VENUE

1. This is an appeal for a denial of the rights afforded by the Arkansas Freedom of Information Act pursuant to Arkansas Code Annotated § 25-19-107¹.

2. The Plaintiff is an adult citizen of the State of Arkansas who submitted a request to Governor Mike Beebe for review of public records pursuant to the FOIA.

¹. All statutory references in this Complaint are to the Arkansas Code Annotated unless otherwise indicated.

3. The Defendant is Mike Beebe, Governor of the State of Arkansas, a constitutional officer who has a legal obligation to provide upon proper request access to public records in his possession upon proper request. This legal obligation is defined in § 25-19-103(5)(a) and subject to any exclusions or limitations in Arkansas Code Annotated §§ 25-19-105(b) and/or 25-19-105(c). See § 25-19-105(d)(1) and 25-19-105(d)(2).

4. This action is against Governor Beebe in his office and his official capacity and is therefore not a suit against him individually. (*George v. Ark. Dept. of Human Services*, 88 Ark. App. 135, 195 S.W.3d 399 (2004).)

5. This Court has subject matter jurisdiction pursuant to § 25-19 -107(a) and § 25-19-103(A).

6. Venue is proper in Pulaski County. The Governor's Office is a State constitutional office and the events of this Action occurred within Pulaski County.

II

FACTUAL BACKGROUND

6. On or about October 31, 2013, Plaintiff Megan Tollett submitted an FOIA request to Governor Beebe for the following records in his possession.

[A]ny and all documents or records . . . received by the Governor's Office from individuals seeking an appointment to any state board or commission.

(See letter of Megan Tollett to Governor Beebe attached as Exhibit "1.")

7. On November 1, 2013, the Governor's Chief Legal Counsel responded to this request. He stated:

The records you seek are '[u]npublished memoranda, working papers, and correspondence of the Governor' which 'shall not be deemed to be made open to the public.' See Ark. Code Ann. § 25-19-105(b)(7). Accordingly, your request is denied. (See a true and correct copy of this letter attached as Exhibit "2.")

8. Counsel for Ms. Tollett then wrote the Governor's Chief Legal Counsel explaining that his position was without legal merit. They also stated that unless a positive response was received by 5pm on Tuesday, November 26, 2013, Ms. Tollett would have no alternative but to seek judicial relief in Pulaski County Circuit Court. (A true and correct copy of this letter is attached as Exhibit "3.")

9. The Chief Legal Counsel did not respond to this letter.

10. This action followed.

III

VIOLATION OF THE ARKANSAS FREEDOM OF INFORMATION ACT

11. Plaintiff realleges and incorporates by reference each and every allegation set forth in Paragraphs 1 through 10 inclusive of this Complaint as if fully set forth herein.

12. The primary goal of the FOIA is to insure that “public business is conducted in an open and public manner so that the electors shall be advised of the performance of public officials.” (§ 25-19-101.)

13. Arkansas courts have consistently held that the FOIA is to be interpreted liberally in favor of disclosure and its exceptions construed narrowly. (*McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W. 2d 909, 912 (1989).) “We have never taken a narrow view of the FOIA but have always interpreted it to promote free access to public records and most favorably to the public.” (*Legislative Joint Auditing Comm. v. Woosley*, 291 Ark. 89, 722 S.W.2d 581, 583 (1987).)

14. The FOIA requires that “all public records shall be open for inspection” unless “otherwise *specifically provided*.” (§ 25-19-105(a)(1)(A).)

15. The FOIA request that is the subject of this action asked for documents:

[R]eceived by the Governor’s Office from individuals seeking an appointment to any state board or commission from January 1, 2012 to present.

16. The Governor’s Office claims documents *received* by the Governor are his “Unpublished memoranda, working papers and correspondence.”

17. § 25-19-105(b)(7) of the FOIA was cited in support of this assertion.

18. The claimed exception is meritless on its face.

19. The “Working Papers” exception is limited to specific individuals. It is also limited to the *office* of the particular official involved. (See *Byrne v. Eagle*, 319 Ark. 587, 892 S. 2d 487, 491 (1995).) Outside individuals who submit letters or applications to the Governor are not included.

20. The documents requested are not the Governor’s working papers, preliminary drafts or memoranda. Nor were they prepared by the Governor or anyone in his office.

21. They were submitted to the Governor in their final form. Because they were transmitted by third parties to the Governor, they were neither “preliminary” nor “unpublished.”

22. Therefore, as a matter of law documents generated by outside parties seeking gubernatorial appointments and sent to the Governor cannot be *his* preliminary drafts, working papers or memoranda and are not covered by the exception claimed in the FOIA.

23. The refusal of the Governor’s Office to provide the requested records is a bad faith refusal and is not “substantially justified.”

PRAYER FOR RELIEF

24. The Plaintiff asks that the Court set this matter for hearing within seven days of the filing of this Complaint pursuant to Ark. Code Ann. § 25-19-107(b).

WHEREFORE, Plaintiffs respectfully pray this Court award the following relief:

1. Find that the Defendant has failed to comply with the Arkansas Freedom of Information Act with respect to Plaintiff's October 31, 2013 request;
2. Order the Defendant to provide the requested documents within seven (7) days of the Court's Order;
3. Award the Plaintiff costs of suit;
- 4) For such other and further relief that the Court deems appropriate.

Respectfully submitted

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