

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
HON. WENDELL GRIFFEN - 5TH DIVISION 6TH CIRCUIT**

SEBASTIAN WESTERHOLD V LR POLICE DEPARTMENT ET AL

60CV-14-3271

SUMMONS

THE STATE OF ARKANSAS TO DEFENDANT:

LITTLE ROCK POLICE DEPARTMENT
700 W MARKHAM ST
LITTLE ROCK, AR 72201

A lawsuit has been filed against you. The relief demanded is stated in the attached complaint. Within 30 days after service of this summons on you (not counting the day you received it) - or 60 days if you are incarcerated in any jail, penitentiary, or other correctional facility in Arkansas - you must file with the clerk of this court a written answer to the complaint or a motion under Rule 12 of the Arkansas Rules of Civil Procedure.

The answer or motion must also be served on the plaintiff or plaintiff's attorney, whose name and address are:

SEBASTIAN WESTERHOLD
PLAINTIFF
24 ASHWOOD
CABOT, AR 72023

If you fail to respond within the applicable time period, judgment by default may be entered against you for the relief demanded in the complaint.

Additional notices:

Address of Clerks Office

LARRY CRANE, CIRCUIT CLERK
CIRCUIT COURT OF PULASKI COUNTY
401 W MARKHAM
LITTLE ROCK, AR 72201

CLERK OF COURT

Kurt G Schwarznau



DEP CLERK Kurt G Schwarznau, DC

Date: 08/22/2014

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Kurt G. Schwarznau

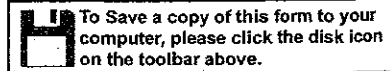


DEP CLERK Kurt G Schwarznau, DC

Date: 08/22/2014

Multiple claims. If a complaint asserts multiple claims which involve different subject matter divisions of the circuit court, the cover sheet for that division which is most definitive of the nature of the case should be selected and completed.

**COVER SHEET
STATE OF ARKANSAS
CIRCUIT COURT: CIVIL**



The civil reporting form and the information contained herein shall not be admissible as evidence in any court proceeding or replace or supplement the filing and service of pleadings, orders, or other papers as required by law or Supreme Court Rule. This form is required pursuant to Administrative Order Number 8. Instructions are located on the back of the form.

County: Pulaski FILING INFORMATION District: 0 Docket Number: CV
Judge: _____ Division: _____ Filing Date: 08-22-2014
Plaintiff: Sebastian Wertzels Defendant: LRPO / City of Little Rock

Attorney Providing Information: _____
☐ Plaintiff ☐ Defendant ☐ Intervenor Address _____

Litigant, if Pro Se: Sebastian Wertzels Address _____

Related Case(s): Judge _____ Case Number(s) _____

Type of Case:

Torts

- ☐ (NM) Negligence: Motor Vehicle
- ☐ (NO) Negligence: Other
- ☐ (BF) Bad Faith
- ☐ (FR) Fraud
- ☐ (MP) Malpractice
- ☐ (PL) Product Liability
- ☐ (OD) Other _____

Contracts

- ☐ (IS) Insurance
- ☐ (DO) Debt: Open Account
- ☐ (PN) Debt: Promissory Note
- ☐ (EM) Employment
- ☐ (OC) Other _____

Equity

- ☐ (FC) Foreclosure
- ☐ (QT) Quiet Title
- ☐ (IJ) Injunction
- ☐ (PT) Partition
- ☐ (OT) Other _____

Miscellaneous

- ☐ (CD) Condemnation
- ☐ (RE) Replevin
- ☐ (DJ) Declaratory Judgment
- ☐ (UD) Unlawful Detainer
- ☐ (IN) Incorporation
- ☐ (EL) Election
- ☐ (FJ) Foreign Judgment
- ☐ (WT) Writs _____
- ☐ (AA) Administrative Appeal
- ☐ (CF) Property Forfeiture
- ☐ (RD) Remove Disabilities
- ☐ (NC) Name Change
- ☒ (OM) Other _____

Jury Trial Requested: ☐ Yes ☐ No

Manner of Filing:

- ☒ Original ☐ Re-open ☐ Transfer
- ☐ Return from Federal/Bankruptcy Court

DISPOSITION INFORMATION

Disposition Date: _____ ☐ Bench Trial ☐ Non-Trial ☐ Jury Trial

Judgment Type:

- ☐ (DJ) Default Judgment
- ☐ (SJ) Summary Judgment
- ☐ (CJ) Consent Judgment
- ☐ (TJ) Trial Judgment
- ☐ (OJ) Other Judgment
- ☐ (PG) Petition Granted
- ☐ (PD) Petition Denied
- ☐ (DF) Decree of Foreclosure

Dismissal Type:

- ☐ (DW) Dismissed with Prejudice
- ☐ (DN) Dismissed without Prejudice

Other:

- ☐ (TR) Transferred to Another Jurisdiction
- ☐ (RB) Removed to Bankruptcy Court
- ☐ (RF) Removed to Federal Court
- ☐ (AR) Arbitration

Judgment For:

- ☐ Plaintiff ☐ Defendant ☐ Both

Judgment Amount: \$ _____

Clerk's Signature

AOC 23 10-01
625 Marshall Street
Little Rock, AR 72201

Date

Send 1 paper or electronic copy to AOC upon filing.
Send 1 paper or electronic copy to AOC upon disposition.
Keep original in court file.

Effective 1-1-2002

PULASKI COUNTY CIRCUIT COURT

**Sebastian Westerhold
24 Ashwood
Cabot, AR 72023**

Plaintiff,

v.

Case _____

**Little Rock Police Department
700 W Markham St.
Little Rock, AR 72201**

**City of Little Rock
500 West Markham Street
Little Rock, AR 72201**

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF

This is an action under the Arkansas Freedom of Information Act ("FOIA"), Freedom of Information Act of 1967 as amended, for injunctive and other appropriate relief, seeking the release of records requested by the Plaintiff from the Little Rock Police Department ("LR PD").

Jurisdiction and Venue

This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to Ark. Code § 25-19-107(a). This Court also has jurisdiction over this action pursuant to Ark. Code § 16-17-704. Venue is proper in this district under Ark. Code § 16-17-706(a).

Parties

1. Plaintiff is an individual seeking information for personal use and not for a commercial purpose.
2. The City of Little Rock is a city in Pulaski County, Arkansas.
3. Little Rock Police Department ("LR PD") is the police department of the city of Little Rock.

FACTS

4. On August 19, 2014, Plaintiff transmitted, via e-mail, a written FOIA request to the LR PD for department records (**Exhibit "A"**). Plaintiff requested the following department records:
 - a. All document containing talk-groups and encryption keys used by LR PD on the Arkansas Wireless Information Network (AWIN);
 - b. All audio recordings of encrypted communications recorded by LR PD between 08/11/2014 and 08/17.
5. Plaintiff also requested a waiver of fees.

LR PD denied Plaintiff's request in part and withheld requested information

6. LR PD transmitted an email to Plaintiff dated August 22, 2014 ("LR PD Response").
7. The LR PD Response acknowledged the receipt of Plaintiff's FOIA Request, but failed to make any determination regarding the substance of Plaintiff's request (**Exhibit "B"**).
8. LR PD produced a document showing names of Talkgroups used by LR PD.
9. LR PD further denied Plaintiff's request for encryption keys and audio recordings.
10. After this initial LR PD Response, the LR PD did not make any additional determinations regarding Plaintiff's request or produced any additional records in response to that request.

**The LR PD Failed to Perform an Adequate Search for, or Produce, Documents Responsive
to Plaintiff's Request**

11. LR PD argues that the requested documents contain information that is exempted from disclosure under the Arkansas Freedom of Information Act.
12. LR PD has not demonstrated that they have in fact researched the requested records and identified whether or not such exempted information is in fact present.
13. It's LR PD who has the evidence burden to proof that certain information is exempt from disclosure.
14. LR PD has not cited the rule under which LR PD assumes exemption.
15. Neither has LR PD provided reasons or evidence substantiating the application of exemption rules.
16. The information requested by Plaintiff does not fall under any of the exemptions of Ark. Code § 25-19-105.
17. LR PD argues that in order to redact exempted information from recordings LR PD would need an employee to physically listen to recordings and note information that should be redacted, identify where it is on the recording, and then create a new record that does not contain such information.
18. LR PD further argues that the aforementioned redaction process would create a new record and that LR PD is not required to create new records in response to a FOIA request.
19. Plaintiff acknowledges that plaintiff does not have to create new records in response to a FOIA request.
20. Plaintiff denies that the described process is required or necessary to redact affected records.
21. Defendants fail to demonstrate why this aforementioned redaction process is the only possible

way to provide records.

22. Even if the requested recordings would contain information exempted from disclosure, LR PD would have to release partial records that are not affected by exemption rules.
23. It is unlikely that all of LR PD's recordings contain only information exempted from disclosure.
24. LR PD is required to research all records applicable to the FOIA request and determine exemption status for every single record individually.
25. LR PD has not demonstrated that such a document search has been completed.
26. LR PD has not demonstrated that exemption status has been evaluated each record individually.
27. The abstract chance that records may potentially contain information exempted from disclosure is not sufficient to deny a record request in full.
28. LR PD could release only parts of audio recordings that do not contain information exempted from disclosure.
29. LR PD is required by law to comply with FOIA request. LR PD is required to dedicate sufficient amount of time, personnel and money to fulfill this legally mandated function. If LR PD argues it does not have the right resources, then this is a pitiful admission on LR PD's inability to perform legally mandated functions. A government department's inability to perform is, however, no valid reason to deny a request under the Arkansas Freedom of Information Act.
30. LR PD argues that it is unable to comply with the request to provide encryption keys as this would allow Plaintiff to access encrypted transmission.
31. LR PD argues no additional reason for exemption.
32. Plaintiff sees this as admission that documents containing encryption keys do exist and are available to LR PD.
33. LR PD has not substantiated why it fears that Plaintiff would use the information contained in such documents for illicit purposes, namely listening to LR PD's encrypted communications.

34. The abstract possibility of illicit use without substantiating arguments is not an acceptable reason for exemption under the Arkansas Freedom of Information Act.
35. LR PD's arguments are irrelevant for the subject matter as the given reasons are not valid reasons for exemption under Ark. Code § 25-19-105.
36. LR PD unlawfully withheld (partial) records.
37. Pursuant to Ark. Code § 25-19-107 (a) plaintiff is entitled to injunctive relief compelling the release and disclosure of the requested records.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

- A. orders defendants to conduct an adequate search for records responsive to Plaintiff's FOIA Request within five working days of the date of the Court's Order in this matter;
- B. orders defendants to produce all responsive agency records within ten business days of the Court's Order in this matter;
- C. awards plaintiff its costs and reasonable attorneys' fees incurred in this action pursuant to Ark. Code § 25-19-107 (d) (1); and
- D. grants such other relief as the Court may deem just and proper.

Respectfully submitted,

By:



Sebastian Westerhold, pro se
24 Ashwood
Cabot, AR 72023
(501) 554-9215 (phone)
kf50bs@gmail.com e-mail

Dated:

8/22/14

FOIA Request

b6
b7C
b7D

Exhibit "A"

ELECTRONICALLY FILED
2014-Aug-22 15:37:45
60CV-14-3271
C06D05 : 1 Page

Sebastian Westerhold <kf5obs@gmail.com>

Tue, Aug 19, 2014 at 10:33 AM

To: KBuckner@littlerock.org

Cc: "Allen, Sidney" <SAllen@littlerock.org>

Bcc: kreynolds@katv.com

Lt. Sidney Allen

Little Rock Police Department

700 W Markham St.

Little Rock, AR 72201

Re: Freedom of Information Act Request

Dear Lt. Allen:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents be provided to me:

1. All document containing talk-groups and encryption keys used by LR PD on the Arkansas Wireless Information Network (AWIN).
2. All audio recordings of encrypted communications recorded by LR PD between 08/11/2014 and 08/17.

In order to help to determine my status to assess fees, you should know that I am an individual seeking information for personal use and not for a commercial use.

I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

Thank you for your consideration of this request.

Sincerely,

/s/ Sebastian Westerhold

24 Ashwood

Cabot, AR 72023

501-554-9215

Blog: <http://jaunty-electronics.com>

Twitter: #KF5OBS

Sloan, James <JSloan@littlerock.org>

Thu, Aug 21, 2014 at 3:52 PM

To: "kf5obs@gmail.com" <kf5obs@gmail.com>

Cc: "Martin, Laura" <LMartin@littlerock.org>, "Allen, Sidney" <SAllen@littlerock.org>

Mr. Westerhold,

In response to your most recent FOI request, I have attached a document that includes the requested "talk groups" for our agency. The LRPD is unable to comply with your request for encryption keys as this would enable you to have unrestricted access to encrypted transmissions. As you may be aware, Arkansas law provides that "it is unlawful for any person other than a law enforcement officer or law enforcement agency, a fire department, the Department of Health, or an employee of a law enforcement agency, a fire department, or the Department of Health to own or operate or possess any radio equipment described as a voice privacy adapter or any other device capable of receiving and decoding police department, fire department, or Department of Health communications that have been transmitted through a voice privacy adapter."

In response to your second request, the LRPD is unable to provide a response to this request. The encrypted audio recordings that you requested contain information that is exempt from disclosure under the Arkansas Freedom of Information Act ("FOIA") and the department does not have software with the capability of removing the information that is not subject to disclosure. Therefore, the only way respond to your request would be to have an employee physically listen to recordings and note information that should be redacted, identify where it is on the recording, and then create a new record that does not contain such information. The FOIA does not require the creation of a record in order to respond to a request.

As always, please feel free to contact me if you have additional questions.

Sgt. James Sloan

LRPD FOI Unit

918-5254