

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ DIVISION

MATTHEW CAMPBELL

PLAINTIFF

v. Case No. 60CV-23-_____

ARKANSAS STATE POLICE
COL. MIKE HAGAR, in his Official Capacity

DEFENDANTS

**APPEAL FROM DENIAL OF RIGHTS UNDER
THE ARKANSAS FREEDOM OF INFORMATION ACT**

This case is a refiled action of plaintiff’s earlier, voluntarily dismissed original action that was filed pursuant to Ark. Code Ann. § 25-19-107 from a denial of the rights guaranteed under the Arkansas Freedom of Information Act (“AFOIA”).

a. Parties, Jurisdiction, & Venue

1. Plaintiff Matthew Campbell is an adult citizen of the state of Arkansas, a resident of Pulaski County, and an attorney in good standing with the Bar of the State of Arkansas, and he brings this action as a matter of right under Ark. Code Ann. § 25-19-107, as he requested specific public records from the Arkansas State Police, and the defendant both actively and constructively denied the plaintiff’s requests and refused to provide the records despite having no valid basis on which to do so.
2. Defendant Arkansas State Police is a division of the Arkansas Department of Public Safety, supported in whole or in part with public funds, and is tasked with providing

certain public records (as that phrase is defined in the AFOIA) upon request from an Arkansas resident, subject only to the express exclusions contained in the law.

3. Defendant Col. Mike Hagar is the Director of the Arkansas State Police and Director of the Arkansas Department of Public Safety, responsible for the oversight of the ASP, which includes ensuring that ASP complies with the AFOIA just as any other agency is required to do. He is sued in his official capacity, as custodian of ASP records over which he has administrative control, within the meaning of Ark. Code Ann. § 25-19-103(1)(A).
4. Jurisdiction and venue are proper in this Court pursuant to Ark. Code Ann. § 25-19-107(a), as Pulaski County is the specified jurisdiction and venue for AFOIA suits brought against the State of Arkansas or one of its departments.
5. This action is a refiling following plaintiff's voluntary dismissal of an earlier action pursuant to Ark. R. Civ. P. 41.

b. Relevant Legal Standards

6. As is relevant here, under the AFOIA, "public records" means "writings, [...] electronic or computer-based information, or data compilations in any medium required by law to be kept or otherwise kept and that constitute a record of the performance or lack of performance of official functions that are or should be carried out by a public official or employee [or] a governmental agency...that is wholly or partially supported by public funds or expending public funds." Ark. Code Ann. § 25-19-103(7)(A).
7. Importantly, "All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records." *Id.*

8. Our Attorney General has opined that a blanket decision to deny access to certain records, without considering whether any parts of that record might not be exempt, is impermissible under the AFOIA. *See Ark. Op. Att’y Gen. No. 97-286.*
9. For over fifty years, it has been a well-settled truth that the AFOIA was “passed wholly in the public interest and is to be interpreted liberally.” *Laman v. McCord*, 245 Ark. 401, 405, 432 S.W.2d 753, 755 (1968).
10. That liberal interpretation means, when an exemption excludes a specific set of records from disclosure, courts will not read additional exclusions into that exemption to reach other, unlisted records. In other words, “the objectives of the FOIA are such that whenever the legislature fails to specify that any records in the public domain are to be excluded from inspection, or is less than clear in its intendments, then privacy must yield to openness and secrecy to the public’s right to know the status of its own affairs.” *Ragland v. Yeargan*, 288 Ark. 81, 85, 702 S.W.2d 23, 25 (1986) (holding that AFOIA exemption of personal tax returns from disclosure did not exclude corporate tax returns from disclosure); *see also Troutt Brothers, Inc. v. Emison*, 311 Ark. 27, 841 S.W.2d 604 (1992) (holding that statute providing for confidentiality in juvenile-court proceedings did not apply to juvenile arrest records when no charges had been filed).
11. Furthermore, even the express AFOIA exemptions are to be narrowly construed. *See Hengel v. City of Pine Bluff*, 307 Ark. 457, 821 S.W.2d 761 (1991); *see also Young v. Rice*, 308 Ark. 593, 826 S.W.2d 252 (1992) (holding that AFOIA exemptions are to be narrowly construed “in a manner that favors disclosure”).

12. Because there is a presumption in favor of disclosure, an entity or custodian claiming an exemption under the AFOIA must carry the burden of establishing that the exemption applies and justifying the nondisclosure of information. *See, e.g., Orsini v. State*, 340 Ark. 665, 13 S.W.3d 167 (2000).
13. Importantly, “the courts are not free to fashion common-law exceptions to the FOIA.” John Watkins, et al., “The Arkansas Freedom of Information Act” (5th ed.), at 109.
14. Regarding statutory exemptions, the Arkansas General Assembly amended the AFOIA in 2009 to provide that “beginning on July 1, 2009, in order to be effective, a law that enacts a new exemption to the requirements of this chapter or that substantially amends an existing exemption to the requirements of this chapter shall state that the record or meeting is exempt from the Freedom of Information Act.” Ark. Code Ann. § 25-19-105(a).
15. In 2017, the Arkansas General Assembly amended Ark. Code Ann. § 18-8-108 to explicitly exempt from AFOIA disclosure security-related records “concerning the Governor’s Mansion and mansion grounds.” Ark. Code Ann. § 18-8-108(c); *see also* The Arkansas Freedom of Information Handbook (20th ed.), at 48 (noting that Ark. Code Ann. § 12-8-108(c) exempts only “security and emergency information concerning the Governor’s Mansion and mansion grounds”).
16. The Arkansas State Police Air Support Unit’s Operations Manual states, “The Air Support Unit Commander should process flight request forms, maintain flight information databases, and produce flight activities reports. These reports are used to provide the chain of command information pertaining to the operation and utilization

of the department's aviation assets *and to provide information to the public requested under the Freedom of Information Act. See, e.g.,* Ark. State Police Air Support Unit Operations Manual (promulgated Sept. 18, 2017), at § 3.203 (emphasis added).

17. The Arkansas State Police General Operations Policy Manual states

E-mail messages that meet the criteria of the definition of a record may be considered public records and must be available to the public. A record must meet the definition of a public records as defined in the *Arkansas Freedom of Information Act*. As with any format, an e-mail message may be considered a public record, unless it falls under one of the exceptions listed in Ark. Code Ann. § 25-19-105(b). All public records must be maintained through the appropriate retention period and be made accessible to the public upon request.

Ark. State Police. Gen. Operations Policy Manual (effective July 14, 2008), at 4.

18. That manual continues, "All agency email is subject to the Arkansas Freedom of Information Act." *Id.*, at 6.

19. "[T]he FOIA is silent as to when one may sue under the act[; accordingly,] the general five-year statute of limitations presumably applies in FOIA cases." *Watkins, supra*, at 358. The five-year period begins at the time a request for public records is denied, in whole or in part, at which time the requesting party "*may* appeal immediately from the denial to the Pulaski County Circuit Court." Ark. Code Ann. § 25-19-107(a) (emphasis added).

20. "A suit against a state official in his official capacity is not a suit against that person but is rather a suit against that official's office." *George v. Arkansas Dep't of Hum. Servs.*, 88 Ark. App. 135, 139, 195 S.W.3d 399, 402 (2004) (citing *Fegans v. Norris*, 351 Ark. 200, 206, 89 S.W.3d 919, 924 (2002)). Thus, an AFOIA suit may be brought against the

custodian, in his or her official capacity, or against the agency for which the custodian works, as the end result is a suit against the agency in either event. *See generally id.*

21. The AFOIA “imposes no responsibility on a records requester to state why he or she wants a record, and the Attorney General has opined that the requester’s motive is immaterial.” *Watkins, supra*, at 90.

c. Facts

22. On June 23, 2023, plaintiff requested the following public records from the Arkansas State Police:

- a. All communications regarding ASP security for Bryan C. Sanders;
- b. All documents regarding expenditures and costs associated with ASP security for Bryan C. Sanders;
- c. All communications regarding ASP security for Sarah H. Sanders;
- d. All documents regarding expenditures and costs associated with ASP security for Sarah H. Sanders.

23. On June 28, ASP attorney Jesi Feld responded to the June 23 request, writing

We cannot release the information you requested. After careful review, the documents you requested are exempt under A.C.A. § 25-19-105(b)(6), A.C.A. § 25-19-105(b)(7), A.C.A. § 25-19-105(b)(12), A.C.A. § 12-8-108, and would unconstitutionally violate the safety and security of the Governor, her family, and the protective detail.

24. On August 7, plaintiff responded to Ms. Feld, explaining in detail that her citation to Ark. Code Ann. § 25-19-105(b)(7) was irrelevant because plaintiff was requesting records from and in the possession of the State Police, which would make a reference to the Governor’s working-papers exemption meaningless. Plaintiff further explained that

Ms. Feld's reliance on Ark. Code Ann. § 25-19-105(b)(12) was similarly without merit because communications between the ASP and the Governor's Office are not remotely "personnel records" that would "constitute a clearly unwarranted invasion of personal privacy" under the AFOIA. Finally, plaintiff pointed out that Ark. Code Ann. § 12-8-108 is almost entirely irrelevant because the only AFOIA exemption in that statute regards records related to the security of the Governor's Mansion. (Plaintiff did note, "I am asking for communications between ASP and the Governor's Office and payroll records and records of other security expenditures. To the extent there might be a record or communication about the governor's mansion or the mansion grounds, those records would be exempt. But no other records would be exempt under 12-8-108.")

25. On August 9, Ms. Feld responded with a second attempt at justifying the improper denial of plaintiff's AFOIA request. In that response, Feld contended that the "information requested would violate the [ASP's] statutory obligation to ensure the safety and security of the Governor" and that plaintiff's request "also unconstitutionally violates the safety and security of the Governor, her family, and the protective detail." According, ASP produced no additional records.

26. On August 14, plaintiff requested the following public records from the ASP:

- a. All flight logs for any plane owned or operated by the ASP from 1/1/23 to present;
- b. All receipts, invoices, or similar documents related to any travel on ASP planes from 1/1/23 to present;

- c. All travel reimbursements for anyone flying on an ASP plane from 1/1/23 to present;
 - d. All communications regarding ASP airplanes from 1/1/23 to present; and
 - e. All flight manifests and passenger lists for any flights on ASP planes from 1/1/23 to present.
27. On August 16, Ms. Feld responded with partial production, sending plaintiff invoices from private pilots hired by ASP to fly ASP planes both for the Governor and otherwise, as well as fuel-purchase logs for the ASP planes. Ms. Feld also said that she would be producing the requested communications soon, once she had an estimate from the Department of Information Services on how long it would take to locate and provide the relevant emails.
28. On August 21, plaintiff requested the following records from ASP:
- a. All records related to any ASP expenditures incurred in sending any ASP personnel to Europe in 2023;
 - b. All records related to any reimbursements made to ASP personnel for expenses incurred while in or traveling to Europe in 2023;
 - c. All documentation regarding airline tickets and hotel rooms purchased as part of ASP personnel travel to or from Europe in 2023.
29. When Ms. Feld contacted plaintiff on August 23 re: both confirmation of receipt of the August 21 request as well as an update on the emails responsive to plaintiff's August 14 request, plaintiff offered to let Ms. Feld focus on the more recent request for European travel records and to provide the emails later, once she was not so busy.

30. On August 29, ASP Chief Counsel Joan Shipley contacted the plaintiff via email regarding his August 21 request. In her email, Shipley wrote, “After a review of any documents that might be responsive to your request below, we are denying your FOIA request due to security concerns based on the [ASP’s] statutory obligation under ACA 12-8-108, as we did in an earlier request that you made which included this same information.”
31. Shipley’s August 29 email included attachments for information related to plane usage and fuel purchases, though she explicitly stated that they were not going to produce the requested communications. However, in the spreadsheet regarding plane usage, Shipley (or someone else with ASP at Shipley’s direction) had attempted to redact the names of passengers on Governor Sanders’ flights, despite no statutory exemption for that information.
32. On August 30, plaintiff made one final attempt to prevent the need for a lawsuit in this matter. In that email, plaintiff provided Ms. Shipley with a detailed explanation for why her legal position was untenable at best and why the law in this matter was on plaintiff’s side, giving the ASP until the close of business on August 31 to provide the remaining requested records or plaintiff would file suit.
33. On September 1, at 6:12PM, Ms. Shipley sent plaintiff an email with a 210-page attachment purporting to be the responsive email records that plaintiff had requested. However, these emails contained multiple illegal redactions of the names of other passengers who flew on ASP planes with the Governor. Despite having no valid legal basis for these redactions, Ms. Shipley attempted to justify the same by reference to

Ark. Code Ann. § 12-8-108, Ark. Code Ann. 25-18-105(b)(13), and Arkansas Attorney General Opinion No. 01-080.

34. As of the date of the filing of this lawsuit, ASP has still not produced the following records with proper, legally supported redactions where applicable:

- a. All communications regarding ASP security for Bryan C. Sanders, requested June 23, 2023;
- b. All documents regarding expenditures and costs associated with ASP security for Bryan C. Sanders, requested June 23, 2023;
- c. All communications regarding ASP security for Sarah H. Sanders, requested June 23, 2023;
- d. All documents regarding expenditures and costs associated with ASP security for Sarah H. Sanders, requested June 23, 2023
- e. All flight logs for any plane owned or operated by the ASP from 1/1/23 to present, requested August 14, 2023;
- f. All communications regarding ASP airplanes from 1/1/23 to present;
- g. All flight manifests and passenger lists for any flights on ASP planes from 1/1/23 to present;
- h. All records related to any ASP expenditures incurred in sending any ASP personnel to Europe in 2023;
- i. All records related to any reimbursements made to ASP personnel for expenses incurred while in or traveling to Europe in 2023;

j. All documentation regarding airline tickets and hotel rooms purchased as part of ASP personnel travel to or from Europe in 2023.

35.

36. At all times relevant to this suit and/or referenced above, Ms. Feld and Ms. Shipley were working in their official capacities as attorneys for Defendant ASP, under the administrative control and authority granted them by Defendant Hagar.

37. All of the records listed above are public records, subject to disclosure under the AFOIA, and redactions done to any of those records prior to production must be limited only to what is specifically exempted by statute.

38. Despite falsely claiming in their denial of plaintiff's requests that Ark. Code Ann. § 12-8-108 already exempted the records that plaintiff had requested, Col. Mike Hagar, director of the Arkansas State Police, conceded that he had actually withheld the records because he believed that plaintiff wanted the records to "embarrass" the Governor. *See* "Arkansas House committee, Senate approve bills to modify open records law," *El Dorado News-Times* (Sept. 14, 2023) (available at <https://www.eldoradonews.com/news/2023/sep/14/arkansas-house-committee-senate-approve-bills-to/>).

39. Importantly—and absolutely fatal to any defense that might be offered by the defendants in this matter—the defendants, through the sworn testimony of Defendant Hagar, admitted that the version of Ark. Code Ann. § 12-8-108 in place at the time of the plaintiff's requests did not exempt the records that plaintiff had requested, despite the repeated false assertions of this claim by Ms. Shipley and Ms. Feld to plaintiff. *See*

Associated Press, “Arkansas governor seeks exemption on travel and security records, backs off other changes” (Sept. 12, 2023) (available at <https://www.wjtv.com/news/regional-news/ap-arkansas-governor-seeks-exemption-on-travel-and-security-records-backs-off-other-changes/>).

d. Analysis: ASP’s Violation of AFOIA

40. Under the AFOIA, plaintiff was entitled to receive electronic copies of the various public records that he requested. *See Pulaski Co. Special Sch. Dist. v. Delaney*, 2019 Ark. App. 210 (holding that the requesting party dictates the format and manner of receipt of the requested records); *see generally* Ark. Code Ann. § 25-19-105.
41. The ASP’s repeated reliance on Ark. Code Ann. § 12-8-108 either demonstrates an ignorance of the AFOIA and its exemptions generally or is a prime example of the ASP’s lack of any relevant, apposite authority on which they can rely to shield these records regarding the Governor’s travel from the public. Based on the testimony of Defendant Hagar, admitting that he shielded the records from disclosure to prevent the Governor from being “embarrassed” and Hagar’s admission that the law in place at the time of plaintiff’s request did not exempt those records, a person would be forgiven for assuming the latter.
42. As noted above, Ark. Code Ann. § 25-19-110 mandates that any exemption to the AFOIA that takes effect after July 1, 2009, “shall state that the record...is exempt from the Freedom of Information Act of 1967.” Ark. Code Ann. § 25-19-110(a). Section 12-8-108 was amended by Act 483 of 2017 to exclude security records related to the

- Governor's Mansion and mansion grounds, and that exemption explicitly referenced the exemption from the AFOIA as required under Ark. Code Ann. § 25-19-110(a).
43. Under the doctrine of *expressio unius est exclusio alterius*, “the express designation of one thing may properly be construed to mean the exclusion of another.” *Buonaiuto v. Gibson*, 2020 Ark. 352, 609 S.W.3d 381 (holding that the use of “four-lane highway” in the language of Amendment 91 meant that the money could not be used for six-lane highways). Here, because the legislature amended section 12-8-108 to exempt security records related to the Governor's mansion and mansion grounds, that statute may properly be read as explicitly not excluding records related to ASP communications about the Governor, ASP expenditures for security of the Governor and her husband except to the extent those records relate to the mansion, passenger lists of persons who flew on ASP planes with the Governor, or ASP expenditures for its own staff to go to Europe (which is so far outside the conceivable bounds of a sane reading of section 12-8-108 that it is absurd for ASP to pretend otherwise).
44. Likewise, Ms. Feld's June 28 citations to Ark. Code Ann. §§ 25-19-105(b)(6), (b)(7), and (b)(12) are irrelevant. Subsection 105(b)(6) applies only to “undisclosed investigations by law enforcement agencies of suspected criminal activity.” Unless Ms. Feld is suggesting that the ASP is looking into whether it is criminal for the Governor to have security or for the ASP to spend money on providing security to the Governor, it is difficult to overstate how irrelevant this exemption is to the facts at hand.
45. Section 25-19-105(b)(7) is the “working papers” exemption. However, that exemption may only be claimed by the Governor's Office or one of the other enumerated offices in

that subsection. As Professor John Watkins explained in his treatise on the AFOIA, “The Attorney General has opined that subsection (b)(7) does not reach ‘correspondence in the hands of other officials not mentioned in this subsection.’” Watkins, at 152 (quoting Ark. Op. Att’y Gen. No. 93-166). The ASP cannot claim the Governor’s working-papers exemption under Ark. Code Ann. § 25-19-105(b)(7) simply because the emails in question are in the possession and administrative control of the ASP, and the working-papers exemption applies solely to the offices referenced in Ark. Code Ann. § 25-19-105(b)(7), which does not include ASP.

46. Similarly, Ms. Feld’s June 28 reference section 25-19-105(b)(12) is largely without merit. The records requested in that instance—communications regarding security for the Governor and Mr. Sanders as well as expenditures made by ASP as part of that security—are, by and large, not the type that would be “personnel records” as that term is used in the AFOIA. However, even if we pretend like those are personnel records for the sake of argument here, Ms. Feld’s reliance on that statute still demonstrates little more than a complete unfamiliarity with the law. Under Ark. Code Ann. § 25-19-105(b)(12), records that do not pertain to individual employees, but rather reference employees as a group, are not covered by this exemption. *See* Ark. Op. Att’y Gen. No. 96-258. Moreover, personnel records are only exempt from disclosure “to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy.” Ark. Code Ann. § 25-19-105(b)(12). Because they are only exempt to that extent, “a blanket denial of access is impermissible.” Watkins, at 191. Even “the fact that the employee might consider release of the information invasive of his personal privacy is

not relevant” to whether the records should be released. *See Watkins*, at 191. Rather, the courts have created a two-pronged test: (1) is the information so personal or intimate in nature sufficient to give rise to a substantial privacy interest; and (2) if so, does the public’s interest in disclosure outweigh that privacy interest? *See Young*, 308 Ark. 593, 826 S.W.2d 252. ASP’s response fails both prongs.

47. Neither what ASP and the Governor’s Office communicate to one another about security details, nor the expenditures incurred by ASP in providing a security detail, are pieces of information that are so personal or intimate that they give rise to a substantial privacy interest. Rather, these are government officials discussing work performed at public expense by other public employees. Nothing in there is remotely “intimate” such that there is a personal privacy interest.

48. Additionally, even if there was some privacy interest—which there is not—it would surely be outweighed by the public’s right to know how much the Governor and her husband’s use of ASP personnel and equipment is costing the taxpayers. As the Arkansas Supreme Court explained nearly sixty years ago, “It is indeed difficult to envision a greater interest in public records which reflect the handling of public funds than that of a citizen and taxpayer whose own contribution to the public funds is directly involved. His is a real interest. It is such that, in the absence of some compelling reason to the contrary, he should be entitled to inspect the records pertaining thereto.” *Republican Party of Arkansas v. State ex rel. Hall*, 240 Ark. 545, 400 S.W.2d 660 (1966).

49. Ms. Feld’s other contention on June 28, that releasing the records would “unconstitutionally violate the safety and security of the Governor, her family, and the

- protective detail” is also without merit. There is no constitutional right to security for “the Governor, her family, and the protective detail” beyond the constitutional rights shared by all Arkansans. This is likely why Ms. Feld did not cite to an actual constitutional provision in support of this position. Regardless, the only right of the Governor and her family to security from the ASP is found in Ark. Code Ann. § 12-8-108, which, as already shown, has no bearing on the release of the records at issue here.
50. Despite the fact that none of the citations in Ms. Feld’s June 28 email were relevant or applicable, she somehow managed to do even worse in her August 9 response, in which she claimed that releasing “the information requested would violate the [ASP’s] statutory obligation to ensure the safety and security of the Governor” and that plaintiff’s request “also unconstitutionally violates the safety and security of the Governor, her family, and the protective detail.”
51. Regarding the claim that releasing the information would violate ASP’s statutory duty, that is patently absurd. The only violation here of a statutory duty is ASP’s continuing refusal to provide records that are subject to release under the AFOIA. The “statutory duty” in section 12-8-108 does not exempt the requested records, and merely saying “statutory duty” over and over does not allow ASP to add exemptions to that statute. A “statutory obligation to ensure the safety” of anyone is not, without an express AFOIA exemption, sufficient to withhold a request for records of communications and expenditures, even if those records touch on the statutorily obligated security. Moreover, claiming that plaintiff’s request “unconstitutionally violates” literally anything is absolutely ridiculous on its face and stands as an example of how uninformed

the ASP staff are regarding the AFOIA if that is truly a position that any of them would take with a straight face.

52. Not that Ms. Shipley's excuses for ASP's non-performance are any better. Her reliance on Ark. Code Ann. § 12-8-108 is just as silly as Ms. Feld's. Indeed, considering that Ms. Shipley is *chief* legal counsel for ASP, her reliance on a statute that, by its own terms, has nothing to do with the requested records might actually be more egregious than Ms. Feld's. Yet, despite that statute's inapplicability, *it is the only citation to any authority that Ms. Shipley even attempted*. Other than 12-8-108, Ms. Shipley's communications regarding the requested records speak only of that statute and a general belief that somehow ASP is above the AFOIA merely by claiming some amorphous "safety" or "security" and pointing at a statute that it appears none of them has read.
53. Ms. Shipley did cite to Arkansas Attorney General Opinion No. 01-080. That is also of no help to ASP's position. Indeed, that opinion undercuts much of their argument, as it says, essentially, that any personnel records that are not specifically exempted under the AFOIA must be produced in response to a request.
54. Ms. Feld and Ms. Shipley responded to plaintiff's AFOIA requests in their official capacities as employees and agents of Defendant ASP, under the supervision, control, and authority of Defendant Hagar, such that Ms. Feld and Ms. Shipley's actions are part and parcel of the defendants' intentional, knowing violation of the AFOIA.
55. It is inarguable that ASP is the custodian of the records that plaintiff requested, and they do not contend otherwise. As the custodian and the entity claiming that the requested records are exempt under the AFOIA, ASP and/or Hagar bear the burden of

- establishing that there is in fact an exemption under the AFOIA that applies to these records. *See Orsini*, 340 Ark. 665, 13 S.W.3d 167.
56. Where, as here, the custodian fails to show anything even resembling an exemption that would preclude production of the requested records, the nonproduction of those records is a violation of the AFOIA on its face.
57. Plaintiff tried multiple times to explain to Ms. Feld and Ms. Shipley, both of whom seem confused about the AFOIA and ASP's actual statutory duties thereunder, why their response was in violation of the law. Both women refused to acknowledge that their position was baseless, resulting in this suit.
58. More importantly, ASP's own reliance on an undefined "security" exemption to the AFOIA is belied by the records that they have produced. While the Excel spreadsheet of the flights taken on ASP planes has the other travelers with Governor Sanders redacted, it still shows when Governor Sanders used the plane. And, while the emails provided improperly redact the other parties traveling on Governor Sanders' numerous flights in the ASP plane, they still show when Governor Sanders' staff reserved the plane, what dates were planned, when those dates changed, the take-off and landing location of the plane, and all other information regarding the flight. Absolutely no one could argue in good faith that knowing all of the details of the governor's flight, down to the tail number of the plane and the time of departure, was not a violation of the "statutory duty" to provide security for the Governor and her family, but merely knowing who else was on a flight that already occurred would be some huge security issue that precludes releasing that information.

59. Indeed, it would also be better—at least from the public perspective of not having the state police lie to citizens about why records are being withheld—if ASP denied the request simply because someone told them not to release who the Governor was traveling with. It still would not be a valid AFOIA exemption, but at least it would not be illogical.
60. The same analysis applies to the denial of plaintiff’s June 23 request for communications about security details and expenditures by ASP. Except to whatever extent those records refer to security at the Governor’s Mansion or on the mansion grounds, those records are subject to disclosure under the AFOIA as was in effect at the time of the request, and ASP has offered nothing to suggest otherwise.
61. Finally, and most egregiously, ASP’s bizarre claim that “a constitutional duty” to provide security prevents them from releasing records about ASP expenditures, for ASP personnel, incurred in traveling to and from Europe as part of their official job duties, is laughable. Or it would be, if blatantly disregarding transparency and hiding how many thousands of dollars ASP spent to send troopers to England and France was funny.
62. It may very well be that ASP believes that their duty to provide security to the Governor under Ark. Code Ann. 12-8-108 *should* necessarily include exemptions for records related to all of the security provided. But what they believe and what the law actually says are two different things, and whether certain records should be exempt from the FOIA is a public-policy decision that must be made by the General Assembly and not the courts. *See Hopkins v. City of Brinkley*, 2014 Ark. 139, 12, 432 S.W.3d 609, 617 (2014); *see also Harris v. City of Fort Smith*, 359 Ark. 355, 365, 197 S.W.3d 461, 467 (2004).

63. Based on all of the foregoing, ASP has violated the AFOIA by refusing to provide public records, including properly unredacted records in some cases, to plaintiff in response to a valid AFOIA request.
64. The changes to Ark. Code Ann. § 25-19-105 and Ark. Code Ann. § 12-8-108 do not change the analysis in this matter, either, for at least two reasons. First, the records were requested between June 23 and August 14, 2023, and the law in effect at that time is clear that plaintiff was entitled to receive those records. The defendants' dishonest, intentional failure to provide the records for such a lengthy period of time that the Governor was able to call a special session in mid-September and amend the law does not entitle the defendants to rely on that change; plaintiff relied on the law as it was written at the time of his request, he should have received the records within a couple days of each request, and the defendants' unclean hands in failing to provide the records is antithetical to the AFOIA, its "laudable purposes," and plaintiff's rights as a citizen of Arkansas.
65. The change to Ark. Code Ann. § 25-19-105 and Ark. Code Ann. § 12-8-108 also does not affect plaintiff's right to the requested records in this case because the Arkansas Legislature failed to properly hold a separate, second vote on the emergency clause in Senate Bill 10.
66. The general assembly failed to take a separate vote on the emergency clause despite knowing that this very Court has explicitly ruled that the failure to hold a separate, second vote on an emergency clause violates the Arkansas Constitution and renders the emergency clause null and void. Because the emergency clause is invalid, the AFOIA

changes contained in SB10 do not become effective until 90 days after the adjournment of the special session in which they were passed, which would be December 13, 2023.

67. Concurrently with this refiled AFOIA appeal from denial of rights, plaintiff has submitted to this Court a motion for temporary restraining order or, in the alternative, for preliminary injunction. In the event that this Court finds that the AFOIA changes *would* apply to plaintiff's current lawsuit if those changes were passed with a valid emergency clause, plaintiff's motion for injunction/restraining order will allow the Court to address the failure of the general assembly to pass a valid emergency clause at the time they passed unnecessary changes to the AFOIA itself.

e. Conclusion

68. James Madison once wrote, "A Popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a tragedy, or perhaps both." Letter from James Madison to W.T. Barry (Compiled in Letters of James Madison, pub. 1865). One hundred years later, the Arkansas Supreme Court echoed this sentiment, writing, "The denial to the public of reasonable access to public records by public officials is not conducive to the perpetuation of our form of government." *Gaspard v. Whorton*, 239 Ark. 849, 394 S.W.2d 621 (1965). The actions of the ASP here, in denying plaintiff access to records that are unquestionably public records and which should absolutely be disclosed under the AFOIA, for what they admit was a plan to protecting the Governor's desire not to have anyone know what she is doing or who she is doing it with, is exactly the kind of action that "is not conducive to the perpetuation of our form of government."

69. As such, ASP's position should be rejected out of hand, and plaintiff prays that this Court will schedule a hearing within seven days as outlined in the AFOIA, will find that ASP has violated the AFOIA, and will order ASP to provide the requested records immediately and without any illegal redactions of passenger lists or any other disclosable information.

70. Plaintiff does not waive the seven-day provision of Ark. Code Ann. § 25-19-107(b), and he asks this Court to set this matter for the first available hearing date in accordance with the statute.

WHEREFORE, based on the foregoing, the plaintiff prays that this Court will set a hearing within seven days, will find that the Arkansas State Police improperly violated the AFOIA by failing to provide public records on request, will order the ASP to provide the records immediately, and will grant the plaintiff any other relief to which he may be entitled.

Respectfully submitted,

/s/ Matthew D. Campbell
Ark. Bar No. 2009032
Pinnacle Law Firm, PLLC
104 Winnwood Rd.
Little Rock, AR 72207
(501) 396-9246
matt@pinnaclelawfirm.com