

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2020 AUG No. A 10:50 20CVS 10257

AMERICAN CIVIL LIBERTIES
UNION OF NORTH CAROLINA,

Plaintiff,

v.

CITY OF CHARLOTTE,

MARCUS JONES, in his official
capacity as City Manager,

and

JOHNNY JENNINGS, in his official
capacity as Chief of the Charlotte-
Mecklenburg Police Department,

Defendants.

COMPLAINT

Under the North Carolina Public Records Act, N.C.G.S. § 132-1 *et seq.*, and Uniform Declaratory Judgment Act, N.C.G.S. § 1-253 *et seq.*, the American Civil Liberties Union of North Carolina (ACLU, or Plaintiff) brings this action to compel timely access to public records. As described below, Plaintiff seeks an order (1) declaring that the records at issue are in fact public records subject to inspection under state law, (2) compelling Defendants to produce those records to Plaintiff for inspection, and (3) awarding costs and reasonable attorney fees pursuant to N.C.G.S. § 132-9(c).

INTRODUCTION

1. Over nine months ago, the ACLU submitted a request to the City of Charlotte to inspect public records concerning the Republican National Convention (RNC), which will take place in Charlotte on August 24, 2020. The ACLU repeatedly contacted City officials in order to request updates, negotiate a rolling production, and accommodate any potential concerns the City might have. To date, however, the City has only produced five documents. It has not provided a timeline for producing the remaining documents, nor has it explained why any records responsive to the ACLU's request qualify for a specific statutory exemption.
2. A major political party's national convention is a historic event that, even in a diminished form, will undoubtedly draw increased political speech and protest. To accommodate this event, the City has already expended significant public resources and prepared for a heightened law enforcement presence.
3. Even after the RNC, the City will continue to have access to the law enforcement, surveillance, and crowd control equipment obtained for the event, including "less than lethal" weapons.
4. Thus, public scrutiny of City operations is especially important at this time.
5. While the COVID-19 pandemic has presented a challenge for state and local governments, the ACLU submitted its request over four months before Governor Cooper declared a state of emergency in North Carolina, and made multiple efforts to secure Defendants' compliance with its request before resorting to litigation.

6. Accordingly, with the RNC set to take place in just three weeks, the ACLU must ask the Court to compel compliance with the Public Records Act.

PARTIES

7. Plaintiff ACLU of North Carolina, an affiliate of the national American Civil Liberties Union, is a non-profit membership organization with its principal office in Raleigh, North Carolina. It has approximately 26,000 members and supporters across North Carolina, including many in Mecklenburg County. The ACLU of North Carolina brings together litigation, legislative, communications, and organizing strategies to empower communities and advocate in issue areas including criminal justice reform, racial justice, LGBTQ equality, reproductive freedom, and the rights of immigrants. Promoting government transparency and accountability and educating the public are critical aspects of the ACLU's mission.

8. Defendant City of Charlotte is a municipal entity subject to the requirements of the Public Records Act.

9. Defendant Marcus Jones is the Charlotte City Manager. His official duties include responding to public records requests. He is sued in his official capacity only.

10. Defendant Johnny Jennings is the Chief of the Charlotte-Mecklenburg Police Department (CMPD). His official duties include responding to public records requests. He is sued in his official capacity only.

JURISDICTION AND VENUE

11. This Court has jurisdiction under N.C.G.S. § 132-9.
12. Venue is proper under N.C.G.S. § 1-77(2), as Defendants reside in Mecklenburg County and their decision to deny Plaintiff access to the requested documents occurred there.

FACTUAL ALLEGATIONS

13. The RNC is an event where the Republican Party will officially nominate its candidates for president and vice president for the 2020 election.
14. To accommodate this anticipated event, the City has contracted with various agencies and private organizations for personnel and equipment.
15. On October 28, 2019, the ACLU sent a letter to Defendant Jones requesting various public records concerning the planning of the RNC. The request was also formally submitted through the City's online public records request form and assigned request number 2948.
16. The records requested included contracts entered into by the City, documents concerning federal grants, documents concerning crowd control and surveillance equipment, budgets, agreements with law enforcement agencies, policies concerning requests to private companies for location data and/or cell phone use information, and communications involving City officials.
17. The City Clerk's Office acknowledged receipt the following day.

18. On December 19, 2019, the ACLU sent a follow-up email to the City Clerk's Office, which responded that it would ask for an update from the departments gathering responsive records.
19. On February 29, 2020, the ACLU again asked the City Clerk's Office for an update and requested that responsive records be produced as they became available.
20. The City Clerk's Office responded five days later, stating only that responsive records were being gathered and reviewed.
21. On March 25, 2020, the ACLU sent a demand letter to Defendants again suggesting a rolling production and dialogue between the parties.
22. On May 1, 2020, Defendants produced the RNC framework agreement—an already public document that Plaintiff had not in fact requested.
23. Over the following two weeks, Defendants produced four additional documents: the CMPD Interactive Directives Guide, which was already publicly available online; a checklist of U.S. Department of Justice guidelines for receiving an RNC security grant; the City's guide for complying with RNC security grants requirements; and a Word version of that same document.
24. On May 19, 2020, ACLU attorneys spoke with City attorneys about the status of the request. The City attorneys said they would try—but could not promise—to produce three additional documents the following week: two redacted contracts and the cover letter of a grant from the U.S. Department of Justice.
25. Those documents have still not been produced.

26. The City attorneys did not identify any specific documents that they believed to be exempt from inspection under the Public Records Act.

27. On May 27, 2020, ACLU attorneys again spoke with City attorneys, as well as then-CMPD Chief Kerr Putney. Again, no timeline was provided and no one explained why any specific statutory exemption applied to documents responsive to Plaintiff's request.

28. On June 18, 2020, ACLU attorneys again spoke with City attorneys. The City attorneys did not provide any timeline for production or assert that any responsive records were exempt from inspection. The ACLU attorneys informed the City attorneys that, given these circumstances, litigation was likely.

29. On June 26, 2020, Defendant Jennings stated publicly that he would not disclose what the Department purchased with a federal security grant before the RNC, but would do so "after the event is over."¹

30. At present, Defendants have only produced five documents in response to Plaintiff's request.

**CAUSE OF ACTION – Denial of Access to Public Records
N.C.G.S. § 132-9**

31. The North Carolina Public Records Act "strongly favors the release of public records to increase transparency in government." *State Employees Ass'n of N.*

¹ Nate Morabito (@natemorabito), Twitter (June 26, 2020, 4:43 PM) <https://twitter.com/NateMorabito/status/1276617020327563264> (posting video clip of interview with Defendant Jennings).

Carolina, Inc. v. N. Carolina Dep't of State Treasurer, 364 N.C. 205, 214, 695 S.E.2d 91, 97 (2010).

32. Once a public official receives a request under the Act, they must fulfill the request "as promptly as possible[.]" N.C.G.S. § 132-6(a).

33. The ACLU submitted a request to Defendants for the purpose of inspection and examination of public records over nine months ago.

34. Defendants have still not produced all or even most responsive records and have not communicated a firm timeline for future production.

35. Therefore, Defendants have denied Plaintiff access to public records.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays the Court grant the following relief:

- a. Set this matter for "immediate hearing" and accord it priority as required by N.C.G.S. § 132-9(a).
- b. Declare that documents responsive to Plaintiff's request are public records.
- c. Declare that Defendants have denied access to public records in violation of the Public Records Act.
- d. Issue preliminary and permanent injunctions requiring Defendants to immediately produce to Plaintiff all public records responsive to its request.
- e. Award Plaintiff costs and reasonable attorney's fees as required by N.C.G.S. § 132-9(c).
- f. Maintain jurisdiction over this matter until the Court is satisfied that the violation of the Public Records Act has been remedied.
- g. Order any other relief the Court finds just and proper.

Respectfully submitted, this the 3rd day of August, 2020.

A handwritten signature in black ink, appearing to read "Dan Siegel", written over a horizontal line.

Daniel K. Siegel
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