

361 So.3d 348

District Court of Appeal of Florida, Fourth District.

Michael ROLDAN, Appellant,

v.

CITY OF HALLANDALE BEACH, Appellee.

No. 4D22-103

I

[April 5, 2023]

Synopsis

Background: Requester brought suit against city under the Public Records Act to enforce his request for records related to a law enforcement matter. The Circuit Court, 17th Judicial Circuit, Broward County, [Keathan B. Frink, J.](#), entered order granting requester's summary judgment motion in part and then entered order denying requester's motion for final judgment, granting city's motion for summary judgment, and entering final judgment for city. Requester appealed.

[Holding:] The District Court of Appeal, [Forst, J.](#), held that requester's single communication to city was insufficient to serve as “written notice identifying the public record request” required for entitlement to attorney fee award.

Affirmed in part, reversed in part, and remanded with instructions.

[Gerber, J.](#), concurred specially with opinion.

Procedural Posture(s): On Appeal; Motion for Summary Judgment; Motion to Enter Judgment.

West Headnotes (9)

[1] Statutes 🔑 **Language****Statutes** 🔑 **Context**

In interpreting the statute, courts follow the “supremacy-of-text principle”—namely, the principle that the words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.

[2] Statutes 🔑 **Language****Statutes** 🔑 **Design, structure, or scheme**

Judges must exhaust all the textual and structural clues that bear on the meaning of a disputed text.

[3] Statutes 🔑 **What constitutes ambiguity; how determined****Statutes** 🔑 **Context**

The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.

[4] Records 🔑 **Costs and Fees**

Purpose of the Public Records Act's attorney's fees provisions is to encourage voluntary compliance with Florida's public records law, which gives effect to the state's policy that all state, county, and municipal records shall be open for personal inspection by any person. [Fla. Stat. Ann. § 119.01\(1\)](#).

[5] Statutes 🔑 **Context**

The meaning of a word used in a statute cannot be determined in isolation, but must be drawn from the context in which it is used.

[6] Records 🔑 **Costs and Fees**

Unlawful refusal under the Public Records Act, warranting an award of attorney fees, includes not only affirmative refusal to produce records, but also unjustified delay in producing them.

 [Fla. Stat. Ann. § 119.12](#).

[7] Records 🔑 **Costs and Fees**

Where delay in producing records is at issue, the court must determine whether the delay was justified under the facts of the particular case in order to determine whether the delay was

unlawful refusal under attorney's fee provision of Florida's public records law.  Fla. Stat. Ann. § 119.12.

[8] Records **Costs and Fees**

It is only an unjustified delay in making nonexempt public records available that violates Florida's public records law.  Fla. Stat. Ann. § 119.12.

[1 Case that cites this headnote](#)

[9] Records **Proceedings to award; evidence**

Requester's sole communication to city's records custodian, his e-mailed public record request, was insufficient to serve as the "written notice identifying the public record request" needed to commence five-day notice period before civil enforcement action could be filed, as required for eligibility for award of attorney fees under the Public Records Act; because a request for records had to occur before there could be any refusal or delay by city to provide the records that would entitle requester to attorney fees under the Act, a separate written notice was required to alert the records custodian of noncompliance with earlier public records request.  Fla. Stat. Ann. § 119.12(1)(b).

[1 Case that cites this headnote](#)

***349** Appeal from the Circuit Court of the Seventeenth Judicial Circuit, Broward County; [Keathan B. Frink](#), Judge; L.T. Case No. CACE19-021252.

Attorneys and Law Firms

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Jennifer Merino, City Attorney, City of Hallandale Beach, for appellee.

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Center for Government Accountability, in support of appellant.

[Ashley H. Lukis](#), GrayRobinson, P.A., Tallahassee, for Amicus Curiae Florida League of Cities, Inc., in support of appellee.

Opinion

[Forst, J.](#)

Appellant Michael Roldan appeals from the trial court's final judgment wherein the trial court failed to award him attorney's fees in his public record enforcement action against Appellee City of Hallandale Beach ("the City"). On appeal, Roldan argues the trial court: (1) erred in finding Roldan's written public record request to the City's records custodian, standing alone, was not sufficient to serve as the "written notice identifying the public record request" required for entitlement to attorney's fees under  [section 119.12\(1\)\(b\), Florida Statutes \(2019\)](#); and (2) erred in entering final judgment in the City's favor on Roldan's enforcement action, despite the City's concession that it unjustifiably delayed in producing the requested public records.

On the first argument, we affirm the trial court's finding that  [section 119.12\(1\)\(b\)](#) requires a complainant to provide a separate "written notice identifying the public record request" before the plaintiff may recover attorney's fees in an enforcement action. However, to the extent the City conceded that it unjustifiably delayed in producing the requested public records, which required Roldan to file his enforcement action, we agree with Roldan that the final judgment should indicate the City's violation of the Public Records Act and that final judgment therefore should be entered in Roldan's favor. Thus, we vacate the final judgment and remand for entry of a new final judgment which includes these modifications.

Background

In May 2019, Roldan requested public records from the City of Hallandale Beach related to a law enforcement matter. Roldan emailed this request to the City's Police Department and the City Clerk, who serves as the City's records custodian. After five months without response, Roldan ***350** filed suit to enforce his request. Only then did the City produce the requested public records.

Even though the City had produced the requested public records, Roldan nevertheless pursued his enforcement action by filing a summary judgment motion arguing the City's unjustified delay in producing the requested public records violated the Public Records Act. Roldan also argued he was entitled to recover his attorney's fees under [section 119.12\(1\), Florida Statutes \(2019\)](#). [Section 119.12\(1\)](#)—titled “Attorney fees”—provides in pertinent part:

(1) If a civil action is filed against an agency to enforce the provisions of this chapter, the court shall assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if the court determines that:

(a) The agency unlawfully refused to permit a public record to be inspected or copied; and

(b) The complainant provided written notice identifying the public record request to the agency's custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (2). The notice period begins on the day the written notice of the request is received by the custodian of public records, excluding Saturday, Sunday, and legal holidays, and runs until 5 business days have elapsed.

[§ 119.12\(1\), Fla. Stat. \(2019\)](#).

The City conceded that its unjustified delay in producing the requested public records was unlawful, but argued that Roldan was not entitled to recover his attorney's fees under [section 119.12\(1\)](#). Specifically, the City argued that Roldan had failed to provide the City with a separate “written notice identifying the public record request” at least five days before filing suit, as [section 119.12\(1\)\(b\)](#) requires.

The trial court entered an order granting Roldan's summary judgment motion, but only to the extent of finding that the City's unjustified delay in producing the requested public records violated the Public Records Act. Specifically, the trial court found the City's failure to produce the requested public records until after the plaintiff had filed the lawsuit “constitute[d] an unlawful refusal to permit a public record to be inspected or copied.” The trial court's order did not comment on Roldan's request for entitlement to recover his attorney's fees under [section 119.12\(1\)](#).

Roldan then filed a motion for final judgment requesting entitlement to recover his attorney's fees under [section 119.12\(1\)](#). Subsequently, the City filed its own summary judgment motion, arguing Roldan was not entitled to recover his attorney's fees under [section 119.12\(1\)](#).

At the hearing on the competing motions, the parties agreed that whether Roldan was entitled to recover his attorney's fees under [section 119.12\(1\)](#) hinged on a question of statutory interpretation, namely whether Roldan's sole communication with the City—his emailed public record request itself—satisfied [section 119.12\(1\)\(b\)](#)'s requirement that he provide “written notice identifying the public record request.”

Roldan argued that his emailed public record request satisfied this notice requirement. The City contended that [section 119.12\(1\)\(b\)](#) requires a later written notice that identifies a prior unsatisfied public record request. Thus, the City argued, Roldan's sole communication—his emailed public record request itself—was insufficient.

The trial court agreed with the City, holding that Roldan's email could not serve as both the public record request and the required “written notice identifying the *351 public record request.” Specifically, the trial court found:

[A] plain reading of [[section 119.12\(1\)\(b\)](#)] requires [Roldan] to establish that a written notice identifying the public record request was sent to the City. The Court further finds that [Roldan's] May 21, 2019[,] communication constitutes the public record request and is not the required [“written notice identifying the public record request[”] at least five days prior to filing of the suit.

This reading of the statute is further required when one considers subsection (2) which states, “[t]he complainant is not required to provide written notice of the public record request to the agency's custodian of public records as provided in paragraph (1)(b) if....” Since a request must be made in order for a plaintiff to have a cause of action in a civil complaint, there is no logical reading of [subsection] (2) that would permit [subsection] (1)(b) to be read as meaning that the written notice referenced is merely the public records request itself.

The Court then entered an order denying Roldan's motion for final judgment, granting the City's motion for summary

judgment, and entering final judgment for the City. This appeal timely followed.

Analysis

This dispute requires us to determine whether a written public record request—without a separate later notice—satisfies

§ 119.12(1)(b)’s requirement to “provide[] written notice identifying the public record request to the agency’s custodian of public records at least 5 business days before filing the civil action” in order to recover attorney’s fees under

§ 119.12(1). “Because the question presented solely involves interpretation of a statute, it is subject to de novo review.” *Sch. Bd. of Palm Beach Cnty. v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1232 (Fla. 2009).

[1] [2] [3] No court has interpreted § 119.12(1)(b). “In interpreting the statute, we follow the ‘supremacy-of-text principle’—namely, the principle that ‘[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.’ ” *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)). “[J]udges must ‘exhaust “all the textual and structural clues” ’ that bear on the meaning of a disputed text.” *Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) (quoting *Alachua County v. Watson*, 333 So. 3d 162, 169 (Fla. 2022)). “The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.”

Robinson v. Shell Oil Co., 519 U.S. 337, 341, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997).

[4] The purpose of the Public Records Act’s attorney’s fees provisions “is to encourage voluntary compliance with Florida’s public records law, which gives effect to the state’s policy ‘that all state, county, and municipal records shall be open for personal inspection by any person.’ ” *Office of State Att’y for the Thirteenth Jud. Cir. v. Gonzalez*, 953 So. 2d 759, 763 (Fla. 2d DCA 2007) (quoting § 119.01(1), Fla. Stat. (2002)).

Before 2017, plaintiffs seeking to enforce the Public Records Act could recover their reasonable attorney’s fees and costs

merely upon a court finding that an agency defendant had unlawfully withheld public records. See § 119.12, Fla. Stat. (2016).

In 2017, the legislature amended § 119.12 to add a second criterion—the *352 plaintiff must have provided written notice identifying the public record request to the agency’s custodian of public records at least five business days before filing the civil action, except under limited circumstances. See Ch. 2017-21, Laws of Fla. As presented above, the amended § 119.12(1) provides:

(1) If a civil action is filed against an agency to enforce the provisions of this chapter, the court shall assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if the court determines that:

(a) The agency unlawfully refused to permit a public record to be inspected or copied; and

(b) The complainant provided written notice identifying the public record request to the agency’s custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (2). The notice period begins on the day the written notice of the request is received by the custodian of public records, excluding Saturday, Sunday, and legal holidays, and runs until 5 business days have elapsed.

§ 119.12(1), Fla. Stat. (2019).

Both parties agree that § 119.12(2)’s exception is not applicable in this case. They also agree that “[t]he agency unlawfully refused to permit a public record to be inspected or copied,” with the refusal extending from the receipt of the plaintiff’s emailed public record request to a date after the filing of the suit, a period of about five months. The parties’ dispute is focused on the meaning to be given to the phrase “written notice identifying the public record request.”

The City argues that § 119.12(1)(b)’s reference to the “written notice identifying the public record request”—which commences the five-day “notice period”—is separate from § 119.12(1)(b)’s reference to the “public record request” itself.

Roldan urges a different interpretation. Roldan contends that any written communication containing a public record request and submitted to an agency's records custodian—such as his emailed public record request here—is sufficient to serve as both the public record request and as [section 119.12\(1\)\(b\)](#)'s required “written notice identifying the public record request,” as long as the written public record request was provided to the agency's public records custodian at least five business days before filing the civil action.

[5] We do not adopt Roldan's interpretation. “[T]he meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.” *Lab'y Corp. of Am. v. Davis*, 339 So. 3d 318, 324 (Fla. 2022) (quoting [Deal v. United States](#), 508 U.S. 129, 132, 113 S.Ct. 1993, 124 L.Ed.2d 44 (1993), *superseded by statute as recognized in* [United States v. Davis](#), — U.S. —, 139 S. Ct. 2319, 2324 n.1, 204 L.Ed.2d 757 (2019)). “ ‘Context is a primary determinant of meaning.’ Under the whole-text canon, proper interpretation requires consideration of ‘the entire text, in view of its structure and of the physical and logical relation of its many parts.’ ” *Id.* (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167 (2012)).

[6] [7] [8] Accordingly, we consider the relationship between [section 119.12\(1\)\(a\)](#) and [section 119.12\(1\)\(b\)](#). There is an “and” between the two subsections. Thus, entitlement to fees requires meeting criteria (a) *and* (b). The first criterion, found in [section 119.12\(1\)\(a\)](#), requires a finding that the agency “unlawfully refused to permit a public record to be inspected or copied.” [§ 119.12\(1\)\(a\)](#), Fla. Stat. (2019). “Unlawful *353 refusal under [section 119.12](#) includes not only affirmative refusal to produce records, but also unjustified delay in producing them.” *Jackson v. City of S. Bay*, 4D21-3503, 358 So.3d 18, 22 (Fla. 4th DCA Feb. 15, 2023) (quoting *Citizens Awareness Found., Inc. v. Wantman Grp., Inc.*, 195 So. 3d 396, 399 (Fla. 4th DCA 2016)). “ ‘Where delay is at issue ... the court must determine whether the delay was justified under the facts of the particular case.’ It is only an ‘[u]njustified delay in making nonexempt public records available [that] violates Florida's public records law.’ ” *Citizens Awareness*, 195 So. 3d at 399 (second and third alteration in original) (first quoting *Lilker v. Suwannee Valley Transit Auth.*, 133 So. 3d 654, 655–56 (Fla. 1st DCA 2014);

and then quoting [Promenade D'Tberville, LLC v. Sundy](#), 145 So. 3d 980, 983 (Fla. 1st DCA 2014)).

Because no refusal or delay can occur before a request is made, it follows that the request must occur *before* the second criterion is met—the complainant providing “written notice identifying the public record request to the agency's custodian of public records,” thus commencing a five-day “notice period,” as explained in [section 119.12\(1\)\(b\)](#). Otherwise, the notice could not alert the records custodian of noncompliance with the earlier public record request.

Roldan would have us read [section 119.12\(1\)\(b\)](#)'s references to a written notice and five-business days deadline be permitted as *simultaneous* with any request, and *before* any refusal or delay—unlawful or otherwise—in producing the requested public records. That approach is both illogical and renders the notice ineffective in “encourag[ing] voluntary compliance with Florida's public records law” consistent with [section 119.12](#)'s purpose. See [Gonzalez](#), 953 So. 2d at 763. That approach also impermissibly converts [section 119.12\(1\)\(b\)](#)'s text from “[t]he complainant provided written notice identifying the public record *request*” (emphasis added) to “[t]he complainant provided written notice identifying the public record *request[ed]*.” See *Fla. Dep't of Revenue v. Fla. Mun. Power Agency*, 789 So. 2d 320, 324 (Fla. 2001) (“A court's function is to interpret statutes as they are written”); *Porsche Cars N. Am., Inc. v. Copans Motors Inc.*, 343 So. 3d 576, 583 (Fla. 4th DCA 2022) (“The judiciary ... is without power to rewrite a plainly written statute” (first and second alterations in original) (quoting [Westphal v. City of St. Petersburg](#), 194 So. 3d 311, 313–314 (Fla. 2016))).

Further, applying Roldan's interpretation would appear to transform the five-day notice period under [section 119.12\(1\)\(b\)](#) into a five-day deadline for agency compliance with all public record requests. Indeed, if [section 119.12\(1\)\(b\)](#)'s written notice is the only required contact with the agency, then the failure to provide the requested public records within five business days is always “unlawful.” This would contradict well-established case law holding that government agencies must be afforded a reasonable period to comply with a given request. See, e.g., *Consumer Rts., LLC v. Bradford County*, 153 So. 3d 394, 397 (Fla. 1st DCA 2014).

The City's construction of  [section 119.12\(1\)\(b\)](#), however, harmonizes the notice requirement with the exception provided in  [section 119.12\(2\)](#):

(2) The complainant is not required to provide *written notice of the public record request* to the agency's custodian of public records as provided in paragraph (1)(b) if the agency does not prominently post the contact information for the agency's custodian of public records in the agency's primary administrative *354 building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has a website.

 § 119.12(2), Fla. Stat. (2019) (emphasis added).

 [Section 119.12\(2\)](#) also refers to the additional requirement of “written notice of the request” if the agency has properly posted its records custodian's contact information. Thus, under both  [section 119.12\(1\)](#) and  [section 119.12\(2\)](#), a public record request must have been served before an unlawful refusal to produce the requested public records can occur.

[9] For these reasons, we reject Roldan's interpretation of  [section 119.12\(1\)\(b\)](#) and affirm the trial court's denial of Roldan's request for attorney's fees. However, as the City concedes that it unjustifiably delayed in producing the requested public records, the trial court must modify the final judgment to indicate the City violated the Public Records Act, and that final judgment is entered in Roldan's favor on his enforcement action.

Conclusion

Under the “ordinary meaning” canon of construction, “[w]ords are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a

technical sense.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 69 (2012). Roldan's emailed public record request was his sole communication to the City's records custodian before filing suit. For purposes of determining eligibility for an award of attorney's fees, that public record request did not, by itself, satisfy  [section 119.12\(1\)\(b\)](#)'s requirement that the complainant provide “written notice identifying the public record request,” triggering the five-day notice period before a civil enforcement action could be filed.

Therefore, although Roldan was entitled to final judgment in his favor on his enforcement action, he was not entitled to recover his attorney's fees under  [section 119.12\(1\)](#). Accordingly, we vacate the trial court's final judgment and remand for entry of a new final judgment which indicates: (1) the City violated the Public Records Act by its unjustified delay in producing the requested public records; (2) final judgment is entered in Roldan's favor on his enforcement action; but (3) Roldan is not entitled to recover his attorney's fees under  [section 119.12\(1\)](#).

Affirmed in part, reversed in part, and remanded with instructions.

Damoorgian, J., concurs.

Gerber, J., concurs specially with opinion.

Gerber, J., concurring specially.

I concur in the majority opinion's conclusion that  [section 119.12\(1\)\(b\)](#), [Florida Statutes \(2019\)](#), requires a public records requestor to provide a *later* written notice—identifying a *prior* public records request—to the responsible agency's public records custodian at least five business days before filing a civil action in order for the requestor to recover reasonable attorney fees against the responsible agency which unlawfully refused to permit a public record to be inspected or copied. As the majority opinion points out, that conclusion can be reached only by reading  [section 119.12\(1\)\(b\)](#)'s two sentences together, whereby  [section 119.12\(1\)\(b\)](#)'s second sentence provides the necessary context to interpret  [section 119.12\(1\)\(b\)](#)'s first sentence.

I write separately to note that—contrary to the City's and its amicus's position here— [section 119.12\(1\)\(b\)](#)'s first sentence, when viewed in isolation, does not necessarily *355 result in that same conclusion by itself. As Roldan argued to the trial court and to us,  [section 119.12\(1\)\(b\)](#)'s first sentence, when viewed in isolation, can easily be read to mean that the “written notice identifying the public record request” may be the public records request itself. Indeed, in this case, Roldan's written notice by e-mail identifying his public records request to the City's records custodian was a “written notice identifying the public record request.” Again, only when reading  [section 119.12\(1\)\(b\)](#)'s two sentences together can we reach the conclusion which the majority opinion articulates.

I also believe that—contrary to the City's and its amicus's position here—a public records requestor's later written notice—*merely identifying a prior public records request, without more*—would not reasonably convey to a public records custodian that: (i) the responsible agency had not complied with the prior public records request, (ii) unless the responsible agency complies with the prior public records request within five days, the requestor intended to file a civil action to enforce the public records request, and (iii) the requestor intended to seek to recover the attorney's fees incurred in pursuing the civil action to a final judgment. According to the City and its amicus, all three of those elements would simply be “understood,” even though  [section 119.12\(1\)\(b\)](#) does not require *any* of those three elements to be stated in the requestor's later written notice.

That is why I believe  [section 119.12\(1\)\(b\)](#)'s first sentence was not written as clearly as possible—and as necessary—to: (1) convey to a public records requestor that the requestor must provide a *later* written notice identifying a *prior* public records request to the responsible agency's public records custodian at least five business days before filing a civil action in order for the requestor to recover reasonable attorney fees against the responsible agency which unlawfully refused to permit a public record to be inspected or copied; and (2) convey to a public records custodian that (i) the responsible agency had not complied with the prior public records request, (ii) unless the responsible agency complies with the prior public records request within five days, the requestor intended to file a civil action to enforce the public records request, and (iii) the requestor intended to seek to recover the attorney's fees incurred in pursuing the civil action to a final judgment.

To convey those points as clearly as possible, I would encourage the Legislature to consider amending  [section 119.12\(1\)\(b\)](#)'s first sentence to read as follows (with certain existing portions of  [section 119.12\(1\)](#) being repeated to better provide context, and with my proposed amendment being underlined):

119.12 Attorney fees.—

(1) If a civil action is filed against an agency to enforce the provisions of this chapter, the court shall assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if the court determines that:

(a) The agency unlawfully refused to permit a public record to be inspected or copied; and

(b) The complainant provided later written notice identifying the prior public record request to the agency's custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (2). The later written notice must inform the agency's custodian of public records that: (i) the responsible agency had not complied with the prior public records request; (ii) unless the responsible agency complies with the prior public records request *356 within 5 days, the complainant intends to file a civil action to enforce the public records request; and (iii) the complainant intends to seek to recover the attorney's fees incurred in pursuing the civil action to a final judgment. The notice period begins on the day the written notice of the request is received by the custodian of public records, excluding Saturday, Sunday, and legal holidays, and runs until 5 business days have elapsed.

This amendment would provide clarity to both public records requestors and public records custodians and, more importantly, would eliminate the need to rely upon our judicial interpretation of  [section 119.12\(1\)\(b\)](#) in order to fully understand  [section 119.12\(1\)\(b\)](#)'s requirements and ramifications.

All Citations

361 So.3d 348, 48 Fla. L. Weekly D706

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376 So.3d 78 (Mem)

District Court of Appeal of Florida, First District.

Grant STERN, Appellant,

v.

Florida Governor Ron DESANTIS; and The Executive
Office of The Governor of Florida, Appellees.

No. 1D2022-1574

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November 15, 2023

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Rehearing Denied December 27, 2023

On appeal from the Circuit Court for Leon County. [Angela C. Dempsey](#), Judge.

Attorneys and Law Firms

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Ryan Newman, General Counsel, and [Daniel Whitehead](#), Assistant General Counsel, and Andrew King, Assistant General Counsel, and Christopher DeLorenz, Assistant General Counsel, Executive Office of the Governor, Tallahassee, for Appellees.

Opinion

Per Curiam.

AFFIRMED. *See Roldan v. City of Hallandale Beach*, 361 So. 3d 348 (Fla. 4th DCA 2023) (holding that a requestor's single written request for public records could not serve as the "written notice identifying the public records request" required to recover attorney's fees under  [section 119.12\(1\)\(b\)](#), Florida Statutes).

[Rowe](#), [Ray](#), and [Winokur](#), JJ., concur.

All Citations

376 So.3d 78 (Mem), 48 Fla. L. Weekly D2201

368 So.3d 16 (Mem)

District Court of Appeal of Florida, Fourth District.

Jerome Eric BIVENS, Appellant,

v.

Gregory TONY, Sheriff, and State of Florida, Appellees.

No. 4D23-299

I

[August 9, 2023]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; [Martin S. Fein](#), Judge; L.T. Case No. 13-10590CF10A.

Attorneys and Law Firms

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[Ashley Moody](#), Attorney General, Tallahassee, and [Melynda L. Melear](#), Senior Assistant Attorney General, West Palm Beach, for appellees.

Opinion

Per Curiam.

*17 We affirm the trial court's order denying appellant's petition for mandamus to compel the production of public records from the Broward County Sheriff. [Section 119.01\(1\), Florida Statutes \(2022\)](#), provides that agencies have the duty to “provide access” to public records and public records “are

open for personal inspection and copying by any person[.]” In this case, appellant did not request the production of records for inspection and copying but instead asked the Sheriff to respond to several questions about an employee's qualifications. Nothing in the plain language of [section 119.01](#) or the Florida Constitution requires agencies to pore through their own records to answer specific questions. See *Jones v. Miami Herald Media Co.*, 198 So. 3d 1143, 1145 (Fla. 1st DCA 2016) (instructing that the Public Records Act may not be “expand[ed] ... beyond its plain language”); *Fla. League of Cities v. Smith*, 607 So. 2d 397, 401 (Fla. 1992) (“Mandamus may not be used to establish the existence of ... a right, but only to enforce a right already clearly and certainly established in the law.”). Thus, the petition for writ of mandamus was properly denied, as it was legally insufficient.

Moreover, appellant never served the petition on the Sheriff, who was the agency head required to respond. Instead, appellant served the Office of the Attorney General. Therefore, the petition was also insufficient, as it was directed against the wrong agency.

Affirmed.

[Warner](#), [Damoorgian](#) and [Kuntz](#), JJ., concur.

All Citations

368 So.3d 16 (Mem), 48 Fla. L. Weekly D1566

362 So.3d 223

District Court of Appeal of Florida, Fourth District.

CITY OF PEMBROKE PINES, Appellant,

v.

TOWN OF SOUTHWEST RANCHES, Appellee.

No. 4D22-2212

|

[March 22, 2023]

Synopsis

Background: City brought public records enforcement action against town. The Circuit Court, 17th Judicial Circuit, Broward County, [Carol-Lisa Phillips](#), J., entered order dismissing city's action. City appealed.

[Holding:] The District Court of Appeal, [Forst](#), J., held that suits between government agencies under Public Records Act do not fall into provided exceptions to statutory duty to negotiate attempt pre-suit conflict resolution.

Affirmed.

Procedural Posture(s): On Appeal; Motion to Dismiss.

West Headnotes (1)

[1] Records **Conditions precedent in general**

Suits between governmental agencies arising under the Public Records Act do not fall into provided exceptions to statutory duty to negotiate under the Governmental Conflict Resolution Act, and thus, before filing a public records enforcement action against another governmental entity, suing governmental entity must first comply with statute imposing on government agencies a duty to negotiate and attempt pre-suit conflict resolution. [Fla. Stat. Ann. §§ 119.01 et seq., 164.1041\(1\)](#).

***224** Appeal from the Circuit Court of the Seventeenth Judicial Circuit, Broward County; [Carol-Lisa Phillips](#), Judge; L.T. Case No. CACE22-005880.

Attorneys and Law Firms

[E. Bruce Johnson](#) and [Hudson C. Gill](#) of Johnson, Anselmo, Murdoch, Burke, Piper & Hochman, P.A., Fort Lauderdale, for appellant.

Richard J. DeWitt III, [Jordan Blair Isrow](#), and Payton Poliakoff of Government Law Group, PLLC, Fort Lauderdale, and [Susan E. Trench](#) of Susan E. Trench, P.A., Miami, for appellee.

Opinion[Forst](#), J.

Appellant City of Pembroke Pines appeals the trial court's order dismissing its public records enforcement action against Appellee Town of Southwest Ranches. The dismissal was without prejudice to Pembroke Pines refiling the action once it had exhausted the conflict resolution procedures prescribed by Chapter 164, Florida Statutes (2022), the Florida Governmental Conflict Resolution Act. We affirm and write to address Pembroke Pines' contention that a dispute concerning a governmental entity's public records' request is exempt from section 164.1041's duty for pre-litigation negotiation.

Background

Pembroke Pines and Southwest Ranches have been embroiled in a complex contract dispute for more than a decade. Pembroke Pines eventually prevailed after a jury trial and was awarded its reasonable attorney's fees. We recently affirmed the trial court's final judgment in favor of Pembroke Pines. *Town of Sw. Ranches v. City of Pembroke Pines*, No. 4D22-418, 2023 WL 1849723 (Fla. 4th DCA Feb. 9, 2023). As part of its effort to establish the reasonableness of its attorney's fees submission, Pembroke Pines made a public records request, pursuant to Chapter 119, Florida Statutes (2022), for records related to Southwest Ranches' attorney's fees and expenses. In response, Southwest Ranches claimed that these records were exempt from public records disclosure because the litigation between the parties was ongoing, pending appeal of the jury verdict. Southwest Ranches thus refused to produce any of the requested records.

Pembroke Pines sent written notice to Southwest Ranches of its intent to sue to enforce its public records request. After Southwest Ranches still did not comply, Pembroke Pines filed the suit underlying this appeal. Southwest Ranches then filed a Motion to Dismiss and/or Abate, referencing [section 164.1041, Florida Statutes \(2022\)](#). That statute requires governmental entities to exhaust alternative dispute resolution options before initiating court proceedings. In response, Pembroke Pines argued [section 164.1041](#) does not apply to actions under Chapter 119. The trial court disagreed and dismissed the action without prejudice, stating: “once [Pembroke Pines] has exhausted the conflict resolution procedures in Chapter 164, it may refile the *225 case.” The court did not rule on whether Southwest Ranches unlawfully refused to comply with Pembroke Pines’ record request. This appeal timely followed.

Analysis

Pembroke Pines’ appeal concerns the question of whether, before filing suit under the Public Records Act against another governmental entity, the suing governmental entity must first comply with [section 164.1041](#), and attempt pre-suit conflict resolution, or whether a Chapter 119 public records request falls under a statutory exception to [section 164.1041](#)’s “duty to negotiate.” The standard of review on this issue is *de novo*.

 *B.Y. v. Dep’t of Child. & Fams.*, 887 So. 2d 1253, 1255 (Fla. 4th DCA 2004) (“The standard of appellate review for issues involving the interpretation of statutes is *de novo*.”).

[Section 164.1041\(1\)](#) imposes on government agencies a duty to negotiate before initiating litigation that requires that “court proceedings on the suit **shall be abated**, by order of the court, **until the procedural options of this act have been exhausted**.” § 164.1041(1), *Fla. Stat. (2022)*. (emphasis added). These procedures require notice, preliminary and public meetings, and resolution of the conflict via passage of an ordinance, resolution, or interlocal agreement. *See* §§ 164.1053–57, *Fla. Stat. (2022)*; 57, *Fla. Stat. (2022)*. The statute also provides a limited set of exceptions and instances where these procedures do not apply.

In pertinent part, [section 164.1041\(1\), Florida Statutes \(2022\)](#) provides:

If a governmental entity files suit against another governmental entity, court proceedings on the suit shall be abated, by order of the court, until the procedural options of this act have been exhausted. The governing body of a governmental entity initiating conflict resolution procedures pursuant to this act shall, by motion, request the court to issue an order abating the case pursuant to this section. All governmental entities are encouraged to use the procedures in this act to resolve conflicts that may occur at any time between governmental entities, but shall use these procedures before court proceedings, consistent with the provisions of this section.... Nothing in this act is intended to abrogate other provisions of law which provide procedures for challenges to specific governmental actions, including, but not limited to, comprehensive plan amendments and tax assessment challenges. The provisions of this act shall not apply to conflicts between governmental entities ... if the governmental entities have reached an impasse during an alternative dispute resolution process engaged in prior to the initiation of court action.

Id.

Chapter 164’s intent is that intergovernmental disputes be resolved “to the greatest extent possible without litigation.” § 164.102, *Fla. Stat. (2022)*. In furtherance of that goal, “[i]t is not the intent of [the legislation creating Chapter 164] to limit the conflicts that may be considered under this act.” § 164.1051, *Fla. Stat. (2022)*.

[W]here a governmental entity files suit against another governmental entity and the procedural options

under chapter 164 have not been exhausted, the plain language of [section 164.1041\(1\)](#) requires the trial court to abate the action regardless of whether either party has initiated the conflict resolution procedures. Any other reading would produce absurd results, would permit parties to evade conflict resolution in favor of litigation, frustrating the entire legislative purpose and intent of Chapter 164.

***226** *City of Miami v. City of Mia. Firefighters' & Police Officers' Ret. Tr. & Plan*, 249 So. 3d 709, 716 (Fla. 3d DCA 2018).

A number of proceedings that are exempted from the [section 164.1041](#) duty to negotiate are explicitly mentioned in [section 164.1041\(1\)](#): Chapter 120 proceedings; appeals; crossclaims and counterclaims filed in litigation; eminent domain, foreclosure or other proceedings where the governmental entity is a necessary party; where a different alternative dispute resolution process is specifically required by general law or contractually agreed to or used; challenges to comprehensive plan amendments; and tax assessment challenges. [Section 164.1041\(1\)](#) does not explicitly mention Public Records Act disputes.

Nonetheless, Pembroke Pines, below and on appeal, with reference to [section 164.1041\(1\)](#), argues that section 119.11 is a “procedure[] for challenges to specific governmental actions,” and the duty to negotiate would “abrogate” that section’s “accelerated hearing” procedure.

We agree with the Answer Brief:

Nothing in Chapter 119 is abolished, annulled or repealed by requiring governmental entities to attempt to work out disputes between themselves

regarding a public records request before the issue is addressed by the court. Section 119.11(1) ... does provide that, once a suit is filed, it is to be heard expeditiously and given priority over other pending cases, but those provisions are not abrogated by requiring a governmental entity to first comply with Chapter 164 when its dispute is with another governmental entity.

There is no statutory ambiguity here. [Section 164.1041\(1\)](#)’s plain language states that suits between government entities “shall be abated, by order of the court, until the procedural options of this act have been exhausted.” [§ 164.1041\(1\), Fla. Stat. \(2022\)](#). We read this language as a clear effectuation of the Legislature’s intent that “conflicts between governmental entities be resolved to the **greatest extent possible without litigation.**” [§ 164.102, Fla. Stat. \(2021\)](#) (emphasis added). An exception from the duty to negotiate, for a public record request, must come from the Legislature, not the courts.

Conclusion

Suits between government entities arising under Chapter 119 do not fall into the provided exceptions to the duty to negotiate under [section 164.1041\(1\)](#). We accordingly affirm the trial court’s order dismissing Pembroke Pines’ public records suit until it has exhausted alternative dispute resolution procedures pursuant to Chapter 164.

Affirmed.

[Warner and Ciklin, JJ.](#), concur.

All Citations

362 So.3d 223, 48 Fla. L. Weekly D627

368 So.3d 512 (Mem)

District Court of Appeal of Florida, Third District.

Edward MOZIE, Appellant,

v.

The STATE of Florida, Appellee.

No. 3D23-388

|

Opinion Filed August 2, 2023.

An Appeal from the Circuit Court for Miami-Dade County,
[Ramiro C. Areces](#), Judge. Lower Tribunal No. F08-47364

Attorneys and Law Firms

Edward Mozie, in proper person.

[Ashley Moody](#), Attorney General, and [Richard L. Polin](#),
Chief Assistant Attorney General, for appellee.

Before [FERNANDEZ](#), [SCALES](#) and [MILLER](#), JJ.

Opinion

PER CURIAM.

Affirmed. See [Roesch v. State](#), 633 So. 2d 1, 2 (Fla. 1993)
(holding that the state attorney's files become public records,
with certain exceptions, after a defendant's sentence becomes
final and that the indigent defendant is not entitled to receive
copies of such public records free of charge).

All Citations

368 So.3d 512 (Mem), 48 Fla. L. Weekly D1508

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365 So.3d 505

District Court of Appeal of Florida, Sixth District.

SCHOOL DISTRICT OF LEE COUNTY, Appellant,

v.

Steven J. BRACCI, P.A., Appellee.

Case No. 6D23-227

I

June 16, 2023

Synopsis

Background: Law firm brought action against county school district for violation of the Public Records Act, arising from firm making a public records request to the district and not receiving a response. After entering order requiring district to produce the requested records, the Circuit Court, 20th Judicial Circuit, Lee County, [Joseph C. Fuller, Jr., J.](#), granted firm's post-judgment motion to compel but denied its motion for contempt. District appealed.

Holdings: The District Court of Appeal, [Traver, C.J.](#), held that:

[1] trial court's factual conclusion that notes compiled by school board's chief of staff were "akin to minutes," was warranted, but

[2] trial court's factual conclusion that notes compiled by school board's chief of staff were documenting what appeared to be polling of school board members as to whether or not board members supported recommendation of superintendent to terminate food vendor's fresh produce contract was not warranted.

Affirmed and remanded with instructions.

Procedural Posture(s): On Appeal; Motion to Compel; Motion for Contempt.

West Headnotes (3)

- [1] **Contempt** 🔑 Demand and refusal of performance of act required
Records 🔑 Findings and conclusions

Trial court's factual conclusion that notes compiled by school board's chief of staff in connection with the individual calls between the superintendent and the school board members were "akin to minutes," was warranted, in order on law firm's post-judgment motion to compel notes and for contempt, in firm's action against county school district for violation of the Public Records Act, arising from firm making a public records request to the district and not receiving a response, where finding was relevant to the inquiry about whether the notes were the chief of staff's personal notes or public record. [Fla. Stat. Ann. § 119.01.](#)

- [2] **Contempt** 🔑 Demand and refusal of performance of act required

Records 🔑 Findings and conclusions

Trial court's factual conclusion that notes compiled by school board's chief of staff were documenting what appeared to be polling of school board members as to whether or not board members supported recommendation of superintendent to terminate food vendor's fresh produce contract was not warranted, in order on law firm's post-judgment motion to compel notes and for contempt, in firm's action against county school district for violation of the Public Records Act, arising from firm making a public records request to the district and not receiving a response; factual conclusion went beyond firm's pleadings and was irrelevant to the issues raised in motion, and competent, substantial evidence did not support the factual conclusion, since notes were not admitted into evidence. [Fla. Stat. Ann. § 119.01.](#)

- [3] **Trial** 🔑 Statements as to Facts, Comments, and Arguments

Attorney argument does not constitute evidence to support a factual finding.

*506 Appeal from the Circuit Court for Lee County. [Joseph C. Fuller, Jr.](#), Judge. Lower Tribunal No. 20-CA-005205

Attorneys and Law Firms

[Christopher D. Donovan](#) and [James D. Fox](#), of Roetzel & Andress, LPA, Naples, for Appellant.

[Steven J. Bracci](#), of Steven J. Bracci, P.A., Naples, for Appellee.

Opinion

[TRAVER](#), C.J.

The School District of Lee County (“School Board”) appeals from a final order entered in a post-judgment contempt proceeding.¹ We have jurisdiction. *See Fla. R. App. P. 9.030(b)(1)(A)*; *507 *Kozel v. Kozel*, 260 So. 3d 337, 337 (Fla. 2d DCA 2018) (reviewing contempt rulings in post-judgment order as final order pursuant to [rule 9.030](#)). We affirm the trial court's final order, but we remand for the trial court to strike a factual conclusion contained in it because Steven J. Bracci, P.A., a Florida Professional Association (“Bracci, P.A.”), did not request this relief in its motion and there is no evidentiary basis for its inclusion.

This dispute arises from a federal lawsuit over the School Board's termination of a food vendor's contract. The federal case includes several counts, including that the School Board violated Florida law when its superintendent had “a series of private one-on-one conversations” with School Board members “and polled each School Board Member about whether to terminate the [food vendor's] contract.”

Shortly after filing the federal lawsuit, Bracci, P.A. made a public records request to the School Board. When it did not receive a response, it filed an action alleging the School Board violated the Public Records Act, [sections 119.01–.15, Florida Statutes \(2020\)](#). The trial court agreed and entered a detailed final order requiring the School Board to produce the public records, Bracci, P.A. requested. Thereafter, Bracci, P.A. filed a post-judgment motion to compel and for contempt, asserting, among other arguments, that the School Board had not provided notes compiled by the School Board's Chief of Staff in connection with the individual calls between the superintendent and the School Board members.

Following a non-evidentiary hearing, the trial court granted Bracci, P.A.'s motion to compel. It did not, however, hold

the School Board in contempt. Indeed, it concluded the School Board had already produced the notes. The School Board does not challenge this ruling. As it did below, it only disputes a factual conclusion contained in the order about what the notes purportedly show. Specifically, the trial court opined that the Chief of Staff's notes “are akin to minutes documenting what appears to be polling of the school board members as to whether or not the board members supported the recommendation of the superintendent to terminate the [food vendor's] fresh produce contract.”

[1] [2] The trial court did not err in concluding that the notes were “akin to minutes” because this was relevant to the inquiry about whether the notes were the Chief of Staff's personal notes or public record. But the trial court erred when it made an unsupported factual finding of what the notes documented. This factual conclusion went beyond Bracci, P.A.'s pleadings and is irrelevant to the public records and contempt issues raised in its motion. *See Jackson v. Household Fin. Corp. III*, 298 So. 3d 531, 540 (Fla. 2020) (recognizing that pleadings frame what is relevant); *Da Cunha v. Mann*, 183 So. 3d 1113, 1116 (Fla. 3d DCA 2015) (striking trial court's factual conclusion where pleadings did not seek it).

[3] Further, competent, substantial evidence does not support the factual conclusion. The trial court did not take evidence; indeed, the notes were not admitted into evidence at the hearing. *See*  *Wolkoff v. Am. Home Mortg. Servicing, Inc.*, 153 So. 3d 280, 281–82 (Fla. 2d DCA 2014) (“A document that was identified but never admitted into evidence as an exhibit is not competent evidence to support a judgment.”). Finally, attorney argument does not constitute evidence to support a factual finding. *See*  *State v. T.A.*, 528 So. 2d 974, 975 (Fla. 2d DCA 1988).

For these reasons, we affirm the trial court's order with directions to strike the *508 factual finding about what the subject documentation “appears to be.”

AFFIRMED and REMANDED with DIRECTIONS.

[COHEN](#) and [WOZNIAK](#), JJ., concur.

All Citations

365 So.3d 505, 419 Ed. Law Rep. 1137, 48 Fla. L. Weekly
D1222

Footnotes

- 1 This case was transferred from the Second District Court of Appeal to this Court on January 1, 2023.

375 So.3d 178
Supreme Court of Florida.

CITY OF TALLAHASSEE, Florida, Petitioner,
v.
FLORIDA POLICE BENEVOLENT
ASSOCIATION, INC., et al., Respondents.

No. SC2021-0651

|
November 30, 2023

Synopsis

Background: Two city police officers who fatally shot suspects threatening them with deadly force brought action, along with their union, against city, seeking declaratory judgment, writ of mandamus, and injunctive relief in connection with city's intent to publicly disclose officers' identities at media's request. Various media organizations intervened, asserting that city police department had failed to respond to their request for public records identifying the two officers. Following a hearing, the Circuit Court, 2nd Judicial Circuit, Leon County, [Charles W. Dodson, J.](#), denied the officers' and the union's requests for relief. Union appealed.

The First District Court of Appeal, [Rowe, C.J.](#), [314 So.3d 796](#), reversed. City and intervenors appealed.

Holdings: The Supreme Court, [Couriel, J.](#), held that:

[1] victim confidentiality provision of Florida Constitution does not guarantee a generalized right of anonymity to crime victims, and

[2] victim confidentiality provision of Florida Constitution did not preclude city from disclosing officers' names and identities to media.

Decision of the First District Court of Appeal quashed and remanded.

Procedural Posture(s): On Appeal; Petition for Writ of Mandamus; Motion for Declaratory Judgment; Motion for Permanent Injunction.

West Headnotes (17)

[1] **Appeal and Error** 🔑 Constitutional law

Interpreting the Florida Constitution is a matter of law that the Supreme Court undertakes de novo.

[2] **Constitutional Law** 🔑 Meaning of Language in General

In interpreting the Florida Constitution, the Supreme Court begins, and for good reason often ends, with its words.

[3] **Constitutional Law** 🔑 Plain, ordinary, or common meaning

The Supreme Court gives the words of the Florida Constitution their plain, usual, ordinary, and commonly accepted meanings at the time they were written.

[4] **Constitutional Law** 🔑 Context and related clauses

To discern the ordinary meaning of the Florida Constitution, words must be read and interpreted in their context, not in isolation.

[5] **Criminal Law** 🔑 Civil liabilities to persons injured; reparation

Victim confidentiality provision of Florida Constitution does not guarantee to a crime victim the categorical right to withhold his or her name from disclosure or a generalized right of anonymity. [Fla. Const. art. 1, § 16\(b\)\(5\)](#).

[6] **Constitutional Law** 🔑 Extrinsic aids to construction in general

Widely circulated dictionaries are helpful for identifying the plain meaning of constitutional language.

- [7] **Criminal Law** 🔑 Right of Accused to Confront Witnesses

Criminal Law 🔑 Cross-examination and impeachment

In almost all cases, the Confrontation Clause guarantees a criminal defendant the right to physically confront accusers and to cross-examine the witnesses against him. U.S. Const. Amend. 6; Fla. Const. art. 1, § 16.

- [8] **Criminal Law** 🔑 Cross-examination and impeachment

Witnesses 🔑 Cross-Examination to Discredit Witness

Through confrontation and cross-examination, defendants have the means of testing the accuracy of witnesses' testimony. U.S. Const. Amend. 6; Fla. Const. art. 1, § 16.

- [9] **Constitutional Law** 🔑 Relation to Constitutions of Other Jurisdictions

States 🔑 Purpose and construction in general

States 🔑 Operation Within States of Constitution and Laws of United States

In interpreting words of State Constitution, Supreme Court is bound under federalist principles to give primacy to State Constitution and to give independent legal import to every phrase and clause contained therein.

- [10] **Criminal Law** 🔑 Right of Accused to Confront Witnesses

A criminal defendant's right to know his accuser's identity under the Confrontation Clause is not absolute. U.S. Const. Amend. 6; Fla. Const. art. 1, § 16.

- [11] **Criminal Law** 🔑 Right of Accused to Confront Witnesses

Absent special circumstances, criminal defendants in Florida have a right to expect that they will meet their accusers in court, whether or not those accusers allege that they are victims of the defendant's actions. Fla. Const. art. 1, § 16.

- [12] **Constitutional Law** 🔑 Context and related clauses

The cardinal rule of constitutional interpretation is to construe provisions in context.

- [13] **Constitutional Law** 🔑 In pari materia

A constitutional amendment must be construed in pari materia with all of those portions of the Constitution which have a bearing on the same subject.

- [14] **Constitutional Law** 🔑 Harmonizing provisions

It is the Supreme Court's job, when possible, to read different constitutional provisions in concert, not conflict; this is especially true when the Court is charged with interpreting a constitutional amendment.

- [15] **Constitutional Law** 🔑 Harmonizing provisions

Constitutional Law 🔑 Operation as to constitutional provisions previously in force

Implied repeal of one constitutional provision by another is not favored, and every reasonable effort will be made to give effect to both provisions.

- [16] **Constitutional Law** 🔑 Presumptions and Construction as to Constitutionality

Every reasonable construction of a constitutional provision must be resorted to in order to save a provision from unconstitutionality.

[17] Criminal Law Civil liabilities to persons injured; reparation

Victim confidentiality provision of Florida Constitution did not preclude city from disclosing to media names and identities of two city police officers who had fatally shot suspects who had threatened officers with deadly force. Fla. Const. art. I, § 16(b)(5).

***180** Application for Review of the Decision of the District Court of Appeal Constitutional Construction/Class of Constitutional Officers, First District - Case No. 1D20-2193 (Leon County)

Attorneys and Law Firms

Philip J. Padovano and [Joseph T. Eagleton](#) of Brannock Berman & Seider, Tampa, Florida; and [Cassandra K. Jackson](#), City Attorney's Office, Tallahassee, Florida, for Petitioner City of Tallahassee, Florida

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[Luke Newman](#) of Luke Newman, P.A., Tallahassee, Florida, for Respondents

Shannon K. Lockheart and [Paul G. Rozelle](#), General Counsel, Pinellas County Sheriff's Office, Largo, Florida, for Amicus Curiae Pinellas County Sheriff, Bob Gualtieri

[Edward G. Guedes](#) and [John J. Quick](#) of Weiss Serota Helfman Cole & Bierman, P.L., Coral Gables, Florida, for Amicus Curiae City of Miami Civilian Investigative Panel

Peter A.D. McGlashan, General Counsel, Volusia County Sheriff's Office, DeLand, Florida, for Amicus Curiae Volusia County Sheriff, Michael J. Chitwood

[Edward L. Birk](#) of Marks Gray, P.A., Jacksonville, Florida, for Amici Curiae Reporters Committee for Freedom of the Press, Radio Television Digital News Association, Poynter Institute, Society of Professional Journalists Florida Pro Chapter, Florida Center for Government Accountability, and Asian American Journalists Association Florida Chapter

[Benjamin James Stevenson](#) of ACLU Foundation of Florida, Pensacola, Florida, and [Daniel B. Tilley](#) of ACLU Foundation of Florida, Miami, Florida; and [David T. Goldberg](#) of Donahue Goldberg & Littleton, Brooklyn, New York, for Amicus Curiae American Civil Liberties Union of Florida, Inc.

[Carri S. Leininger](#) and [Jayme S. Sellards](#) of Williams, Leininger & Cosby, P.A., North Palm Beach, Florida, for Amicus Curiae Palm Beach County Sheriff's Office

Opinion

[COURIEL, J.](#)

***181** This case arises from two unrelated but contemporaneous episodes in which a Tallahassee police officer, asserting self-defense, used lethal force in detaining a suspect. Each officer invoked the protections of [article I, section 16\(b\)-\(e\) of the Florida Constitution](#), an amendment adopted by Florida voters that is colloquially known as Marsy's Law. The amendment enumerates certain rights of crime victims “to achieve justice, ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims, and ensure that crime victims’ rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents.” [Art. I, § 16\(b\), Fla. Const.](#)

The City of Tallahassee (City) proposed to release the two officers’ names to the public. The Florida Police Benevolent Association (FPBA) sought an emergency injunction to prevent that from happening. The trial court decided not to issue that injunction; the FPBA appealed, and the trial court's order requiring disclosure of the officers’ names was stayed pending appeal. The dispute ultimately made its way here.¹

To determine whether the officers’ names can be released, we have been asked three questions: First, can police officers acting in an official capacity be Marsy's Law “victims”? Second, does Marsy's Law require the commencement of a criminal proceeding to take effect? And third, does Marsy's Law contain a right for victims to remain anonymous?

We need only answer the third question to resolve this case: Marsy's Law guarantees to no victim—police officer or otherwise—the categorical right to withhold his or her name from disclosure. No such right is enumerated in the text of [article I, section 16\(b\) of the Florida Constitution](#). Nor, as a

matter of structure, would such a right readily fit with two other guarantees contained in article I: the right expressed in section 16(a) of the criminally accused “to confront at trial adverse witnesses,” and the right found in section 24(a) of every person to inspect or copy public records.

We decide only what Marsy's Law says and does not say; we do not pass upon the validity of any statutory right of certain persons, in certain situations, to withhold their identities from disclosure.

I

A

Florida's constitution requires that every twenty years, a Constitution Revision Commission (CRC) convene to “examine the constitution of the state, hold public hearings, and, not later than one hundred eighty days prior to the next general election, file with the custodian of state records its proposal, if any, of a revision of [the] constitution or any part of it.” [Art. XI, § 2, Fla. Const.](#) Brief summaries of these amendments are then included on the ballot for voters to approve or reject.

In 2018, the CRC proposed several amendments, one of which—Amendment 6—included Marsy's Law. The proposed ballot title and summary for Amendment 6 read in relevant part:

RIGHTS OF CRIME VICTIMS
Creates constitutional rights for victims of crime; requires courts to facilitate victims' rights; authorizes victims to enforce *182 their rights throughout criminal and juvenile justice processes.

 *Dep't of State v. Hollander*, 256 So. 3d 1300, 1306 (Fla. 2018). Three individual plaintiffs and the League of Women Voters filed complaints in the circuit court arguing that the ballot title and summary were misleading. In  *Hollander*, we rejected these consolidated claims, holding that the ballot title and summary reasonably informed voters of the chief

purpose and effect of Amendment 6.  *Id.* at 1311. And in the subsequent general election of 2018, Florida voters approved the proposed amendment.

The provision states that “every victim is entitled to [various] rights, beginning at the time of his or her victimization,” [art. I, § 16\(b\), Fla. Const.](#), including “[t]he right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim,” [art. I, § 16\(b\)\(5\), Fla. Const.](#) And a “victim,” according to Marsy's Law, “is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed.” [Art. I, § 16\(e\), Fla. Const.](#)

B

On May 19, 2020, a man rushed at a Tallahassee police officer with a hunting knife. The officer defended himself by fatally shooting the assailant. Eight days later, on May 27, a different Tallahassee police officer responded to a crime in progress. The perpetrator, who had just stabbed a man to death, aimed a gun at the officer. The officer defended himself by shooting the man, killing him. A grand jury investigated each shooting and determined in each case that the shooting was lawful and a justifiable use of force.²

Reporters sought disclosure of the officers' names from the City. The officers, however, asserted that they qualified for Marsy's Law protections because they were victims of the assaults from which they had defended themselves. And as Marsy's Law victims, the officers argued, they were entitled to prevent the release of their personal identifying information, including their names. The City was not swayed.

The FPBA sued the City on June 12, 2020,³ seeking a declaratory judgment, mandamus relief, and injunctive relief. The circuit court denied the petition and ordered that the names of the officers be released. The First District Court of Appeal reversed. See  *Fla. Police Benevolent Ass'n, Inc. v. City of Tallahassee*, 314 So. 3d 796 (Fla. 1st DCA 2021). According to the First District, (1) “[n]othing in [article I, section 16](#) excludes law enforcement officers—or other government employees—from *183 the protections granted

crime victims,” [id.](#) at 801-02; (2) “a criminal prosecution need not begin before a victim may assert his rights under article I, section 16(e),” [id.](#) at 803-04; and (3) article I, section 16(b)(5) “includes records that could reveal the victim's ... identity,” in this case the officers’ names, [id.](#) at 804.

The City and the News Media Coalition (Coalition) then petitioned this Court to reverse the First District's decision. The trial court's order, requiring the release of documents identifying the police officers’ names, was stayed pending appeal.⁴

II

[1] [2] [3] [4] Interpreting the Florida Constitution is a matter of law that we undertake de novo. See [W. Fla. Reg'l Med. Ctr., Inc. v. See](#), 79 So. 3d 1, 8 (Fla. 2012) (“Statutory and constitutional construction are questions of law subject to a de novo review.”). In so doing, we begin, and for good reason often end, with its words. [Advisory Op. to the Governor re Implementation of Amend. 4, the Voting Restoration Amend.](#), 288 So. 3d 1070, 1078 (Fla. 2020) (“First and foremost, this Court must examine the actual language used in the Constitution.”). And we give the words of the constitution their plain, usual, ordinary, and commonly accepted meanings at the time they were written. See [Brinkmann v. Francois](#), 184 So. 3d 504, 510 (Fla. 2016) (“[W]ords used in the constitution should be given their usual and ordinary meaning because such is the meaning most likely intended by the people who adopted the constitution.” (quoting [Lawnwood Med. Ctr., Inc. v. Seeger](#), 990 So. 2d 503, 512 (Fla. 2008))). “To discern that ordinary meaning ... words must be read and interpreted in their context, not in isolation.” [Sw. Airlines Co. v. Saxon](#), 596 U.S. 450, 142 S. Ct. 1783, 1788, 213 L.Ed.2d 27 (2022) (cleaned up).

[5] Applying these interpretive principles to this case, we conclude that Marsy's Law does not guarantee to a victim the categorical right to withhold his or her name from disclosure. In their ordinary and plain usage, the relevant words of our Constitution, “information or records that could be used to locate or harass the victim or the victim's family, or which

could disclose confidential or privileged information of the victim,” art. I, § 16(b)(5), Fla. Const., do not encompass the victim's identity.

A

We first consider whether a victim's name qualifies as “information or records that could be used to locate or harass the victim or the victim's family.” Art. I, § 16(b)(5), Fla. Const. Yes, says the FPBA, as a victim's name can be used, (crucially) along with other information, to do what the Constitution forbids. What's more, it contends, unless a situation arises in which having a victim's name *could not* assist in locating the victim or the victim's family, Marsy's Law requires concealment of the victim's name upon his or her request.

*184 [6] Fairly read, the text does no such thing. For it is one thing to identify a person and another altogether to locate or harass⁵ him or her. “Widely circulated dictionaries are helpful for identifying the plain meaning of constitutional language.” [Lee Mem'l Health Sys. v. Progressive Select Ins. Co.](#), 260 So. 3d 1038, 1043 (Fla. 2018). To “identify” a person is to “fix the identity of” him or her. *Identify*, [Webster's New World College Dictionary](#) 722 (5th ed. 2018). But to “locate” a person is to “establish [that he or she is] in a certain place.” *Locate*, [Webster's New World College Dictionary](#) 855 (5th ed. 2018).⁶ To “identify” someone, then, is to distinguish him or her from other persons; to “locate” that person is to determine his or her physical whereabouts. The “information or records” from section 16(b)(5) that could be used to accomplish the former are not necessarily the same as those that could be used to accomplish the latter. Marsy's Law speaks only to the right of victims to “prevent the disclosure of information or records that could be used to locate or harass” them or their families. Art. I, § 16(b)(5), Fla. Const. One's name, standing alone, is not that kind of information or record; it communicates nothing about where the individual can be found and bothered.

In other provisions, our Constitution expressly addresses the disclosure of a person's identity. See [art. X, § 25\(b\), Fla. Const.](#) (“In providing such access [to certain medical records], the *identity* of patients involved in the incidents shall not be disclosed”) (emphasis added); [art. X, § 29\(d\)\(4\), Fla. Const.](#) (“All records containing the *identity* of qualifying patients shall be confidential and kept from public

disclosure”) (emphasis added). We are not persuaded that Florida voters ratified an implicit guarantee that, elsewhere in the same constitution, is expressly stated. *See Dep’t of State v. Fla. Greyhound Ass’n, Inc.*, 253 So. 3d 513, 524 (Fla. 2018) (“A proposed amendment ‘must stand on its own merits and not be disguised as something else.’ ” (quoting *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982))).

Similarly, when our statutes reflect a legislative bargain to conceal the identities of persons, they do so expressly. We see this in *section 119.071, Florida Statutes* (2018),⁷ the very legislation that discusses, among other things, confidentiality, public records, and crime victims. *See, e.g.*, *§ 119.071(2)(f), Fla. Stat.* (“Any information revealing the *identity* of a confidential informant or a confidential source is exempt” from public records requirements.) (emphasis added); *§ 119.071(2)(h), Fla. Stat.* (exempting from disclosure any criminal intelligence or criminal investigative information “that reveals the identity” of the victim of certain offenses including child abuse, sexual battery, and other sexual offenses); *§ 119.071(2)(j)11., Fla. Stat.* (exempting from disclosure “[a]ny document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of *185 the victim of a crime and identifies that person as the victim of a crime”).

This stands to reason, for in enacting the Crime Victims Protection Act, the Florida Legislature expressly found “that it is a public necessity that disclosure to the public of victims’ *identities* be limited as provided for in this act.” Ch. 95-207 § 2(5), Laws of Fla. (emphasis added). Likewise, laws that provide for the concealment of the identities of other classes of persons also do so with express reference to their identities. *See, e.g.*, *§ 430.504, Fla. Stat.* (providing that certain “information may not be disclosed publicly in such a manner as to *identify* a person who receives [certain] services”) (emphasis added); *§ 430.608(1), Fla. Stat.* (“Identifying information about elderly persons who receive [certain] services ... is confidential and exempt” from public records requirements.); *§ 458.3193(3), Fla. Stat.* (“The agreement must restrict the release of information that would identify individuals”).

Section 119.071, Florida Statutes, provides another clue that “locate” and “identify” have different meanings relevant to our case. The two words—or derivations or synonyms of them—frequently appear in conjunction with each other;

they would not if just one would suffice to communicate both ideas. *See § 119.071(2)(h)2.b., Fla. Stat.* (allowing for the disclosure of certain information if its “release would assist in *locating or identifying* a person that such agency believes to be missing or endangered”) (emphasis added); *§ 119.071(4)(d)22., Fla. Stat.* (preventing from public disclosure—in twenty-two instances—the names and locations of agency personnel and their family members); *§ 119.071(5)(c)22., Fla. Stat.* (“Information that would identify or locate a child who participates in a government-sponsored recreation program is exempt from” certain public disclosure requirements.); *§ 119.071(5)(c) 3., Fla. Stat.* (same, but for the parents or guardians of those children). This usage is repeated elsewhere in our statutes. *See, e.g.*, *§ 914.27(1)(a), Fla. Stat.* (exempting from public records requirements “information” that “discloses: [t]he identity or location of a victim or witness who has been identified or certified for protective or relocation services”); *§ 943.0583(11)(b)2., Fla. Stat.* (“The information provided should be limited to that needed to identify or locate the victim.”). We break no new ground by giving different effect to these different words. *See Parrish v. State Farm Fla. Ins. Co.*, 356 So. 3d 771, 777 (Fla. 2023) (“Our Legislature, too, has been choosy about [the words disinterested and independent], using them together where the use of one would have sufficed if they meant the same thing.”). These statutory distinctions between the verbs to “locate” and to “identify” are relevant to our understanding of Marsy’s Law: they are evidence that, in our laws as in the minds of the ordinary people they govern, those words mean different things, and are used on purpose when they are chosen—together or separately.

Protecting crime victims from being located—as opposed to identified—is a meaningful distinction, for exposure of a crime victim’s location creates a threat of physical danger that exposure of his or her name alone does not generally pose.⁸ And even though any number of facts can be *186 used to identify a crime victim, such as physical characteristics, sex, age, nationality, or occupation, the Florida Constitution says nothing about protecting the disclosure of those facts. That is because the constitutional text does not guarantee the concealment of absolutely any fact that might be used to identify a victim—to pick him or her out from among others—but on “prevent[ing] the disclosure of information or records that could be used to locate or harass the victim or the victim’s family, or which could disclose confidential

or privileged information of the victim.” Art. I, § 16(b), Fla. Const.

B

That the plain language of section 16(b)(5) does not explicitly protect a victim's name from disclosure stands to reason. For if it did, it would raise serious doubt about how to square a victim's rights under Marsy's Law and a defendant's right to “confront at trial adverse witnesses.” Art. I, § 16(a), Fla. Const.⁹

[7] [8] [9] The right to confront adverse witnesses at trial has been “a cornerstone of Western society for a number of centuries,” *Harrell v. State*, 709 So. 2d 1364, 1367 (Fla. 1998), and it has long been secured by both the United States¹⁰ and Florida Constitutions.¹¹ In almost all cases, “the Confrontation Clause guarantees a criminal defendant the right to physically confront accusers,” *id.* at 1368, and to “cross-examine the witnesses against him,” *187 *Brown v. State*, 471 So. 2d 6, 7 (Fla. 1985).¹² “Through confrontation and cross-examination, defendants have the means of testing the accuracy of witnesses’ testimony.” *Conner v. State*, 748 So. 2d 950, 955 (Fla. 1999); see *Crawford v. Washington*, 541 U.S. 36, 61, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004) (“[The federal Confrontation Clause] is a procedural rather than a substantive guarantee. It commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination.”). And a defendant's knowledge of the identity of an adverse witness is often critical to the force and integrity of a cross-examination, as a witness's identity may be germane to the determination of bias or credibility.

[10] [11] A criminal defendant's right to know his accuser's identity is not absolute, though. See, e.g., *State v. Hassberger*, 350 So. 2d 1, 2, 5 (Fla. 1977) (“The prosecution's limited privilege to withhold the identity of a confidential informer is well established under Florida law.... We approve of the ‘personal safety’ exception to the otherwise ordinary duty of the State to allow the defendant full access to its witnesses on cross-examination”); *United States v. Ramos-Cruz*, 667 F.3d 487, 500 (4th Cir. 2012) (“We have recognized that [the federal confrontation] right is not absolute, however, and that ‘a trial court may limit cross-

examination if the information sought could endanger the witness.’ ” (quoting *Chavis v. North Carolina*, 637 F.2d 213, 226 (4th Cir. 1980)); *United States v. Palermo*, 410 F.2d 468, 472 (7th Cir. 1969) (“[W]here there is a threat to the life of the witness, the right of the defendant to have the witness’ true name, address and place of employment is not absolute.”). But these exceptions prove the rule: absent special circumstances, criminal defendants in Florida have a right to expect that they will meet their accusers in court, whether or not those accusers allege that they are victims of the defendant's actions. See *Hassberger*, 350 So. 2d at 4 (“Almost never ... is the State privileged to withhold the witness’ real identity.”).¹³

*188 [12] [13] For these reasons, even assuming section 16(b)(5) could plausibly be read in isolation to secure a victim's right to anonymity, “the cardinal rule to construe provisions in context,” *United States v. Balsys*, 524 U.S. 666, 673, 118 S.Ct. 2218, 141 L.Ed.2d 575 (1998), counsels against reading it that way. A constitutional amendment “must be construed in para [sic] materia with all of those portions of the Constitution which have a bearing on the same subject.” *State v. Div. of Bond Fin. of Dep’t of Gen. Servs.*, 278 So. 2d 614, 618 (Fla. 1973); see *Amos v. Mathews*, 99 Fla. 1, 99 Fla. 65, 99 Fla. 115, 126 So. 308, 316 (1930) (“[I]n construing and applying provisions of the Constitution, such provisions should be considered, not separately, but in co-ordination with all other provisions.”).

[14] [15] And it is our job, when possible, to read different constitutional provisions in concert, not conflict. See *Burnsed v. Seaboard Coastline R.R. Co.*, 290 So. 2d 13, 16 (Fla. 1974) (“Where a constitutional provision will bear two constructions, one of which is consistent and the other which is inconsistent with another section of the constitution, the former must be adopted so that both provisions may stand and have effect.”). This is especially true when we are charged with interpreting an amendment, for “it is settled that implied repeal of one constitutional provision by another is not favored, and every reasonable effort will be made to give effect to both provisions.” *Jackson v. Consol. Gov’t of City of Jacksonville*, 225 So. 2d 497, 500 (Fla. 1969).

[16] By reading section 16(b)(5) to shield, as a general matter, only information that can be used to locate or harass, rather than identify, a victim, we give effect to Marsy's Law while also protecting a defendant's right to confront adverse

witnesses at trial. That right would be drawn into doubt if we found that [section 16\(b\)\(5\)](#) categorically secured a victim's right to anonymity in all criminal cases. In all, what the text suggests, the context confirms: [section 16\(b\)\(5\)](#) does not secure a victim's right to anonymity.¹⁴

C

Finally, a word about the “[a]ccess to public records and meetings” provision of the Florida Constitution—it says:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.

 [Art. I, § 24\(a\), Fla. Const.](#) It is relevant to this case insofar as our statutes say that “[p]olice reports are public records except as otherwise made exempt or confidential.” *See* [§ 119.105, Fla. Stat.](#) And indeed, the Coalition filed a “public records request” *189 with the Tallahassee Police Department for “any incident records” related to the second of the two shootings,¹⁵ and it “specifically request[ed] such records that include the identity of the officer” The FPBA argued that  [section 24](#) does not require disclosure of the officers’ names, notwithstanding their inclusion in reports that constitute public records, because that provision is expressly subordinated “with respect to records ... specifically made confidential by this Constitution”—to wit, by [section 16\(b\)\(5\)](#).  [Art. I, § 24\(a\), Fla. Const.](#) But for the reasons we have articulated, there is no textual basis in Marsy's Law for the idea that victims’ names are categorically immune from disclosure.

What is missing from this account is [section 24\(c\)](#), which sets out another way to shield certain public records.

The legislature ... may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) ... provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law.

 [Art. I, § 24\(c\), Fla. Const.](#) And sure enough, some Florida statutes do just this¹⁶ for certain public records.

According to  [section 119.071\(2\)\(j\)11](#), Florida Statutes, “[a]ny document that reveals the *identity* ... of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from s. 119.07(1) and  [s. 24\(a\), Art. I of the State Constitution.](#)”

Today's decision neither weakens these various exemptions of certain information from public disclosure, nor prevents the Legislature—in performing the constitutional function reserved to it and not to us—from expanding them. Our decision instead is limited to the determination that Marsy's Law does not guarantee to crime victims a generalized right of anonymity.

III

[17] Marsy's Law does not preclude the City from releasing the names of the two police officers whose conduct is at issue in this case. We quash the decision of the First District Court of Appeal and remand for further proceedings consistent with our decision.

It is so ordered.

MUÑIZ, C.J., and CANADY, GROSSHANS, and FRANCIS, JJ., concur.

LABARGA, J., concurs in result.

All Citations

SASSO, J., did not participate.

375 So.3d 178, 48 Fla. L. Weekly S237

Footnotes

- 1 We have jurisdiction because the First District Court of Appeal's decision below in  [Florida Police Benevolent Ass'n, Inc. v. City of Tallahassee](#), 314 So. 3d 796 (Fla. 1st DCA 2021), expressly construes [article I, section 16\(b\)](#) and (e), provisions of the Florida Constitution. See [art. V, § 3\(b\)\(3\)](#), Fla. Const.
- 2 Regarding the May 19 incident, the grand jury concluded that the assailant's decision to possess a knife, to conceal himself and his weapon, and to charge towards the officer with the knife created a situation in which the officer was reasonably put in fear of imminent bodily harm or death. See Respondents' Answer Brief on the Merits at 6 nn.9-10. The grand jury found similarly regarding the May 27 incident, concluding that the assailant's actions of pointing a gun at the officer while advancing towards the officer created a situation in which the officer was reasonably put in fear of imminent bodily harm or death. See *id.* at 14 nn.21-22.
- 3 By this point, the News Media Coalition had intervened, consisting of (1) the First Amendment Foundation; (2) the Florida Press Association; (3) Gannett Company, Inc. (whose Florida properties include the *Tallahassee Democrat*); (4) The McClatchy Company, LLC (doing business as *Miami Herald*); and (5) The New York Times Company.
- 4 The City asks us to hold “(1) that police officers acting in an official capacity are not ‘victims’ under Marsy’s Law; (2) that Marsy’s Law requires the commencement of a criminal proceeding; and (3) that Marsy’s Law contains no right for victims to remain anonymous.” Petitioner’s Initial Brief on the Merits at 42. Similarly, the Coalition urges us to “hold that law enforcement officers cannot seek ‘victim’ status refuge under Marsy’s Law to hide their identities as it relates to deadly conduct taken in the name of government” and “that the mere identity (*i.e.*, the name) of a Marsy’s Law crime ‘victim’ is never protected.” Petitioner News Media Coalition’s Initial Merits Brief at 4-5. The FPBA, on the other hand, simply asks us to “adopt[] and approve[]” the First District’s decision. Respondents’ Answer Brief on the Merits at 47.
- 5 The City and the Coalition focus primarily on the connection between identifying and locating a victim, perhaps upon the assumption that locating an individual is a predicate to his or her harassment. *But see infra* note 8.
- 6 Likewise, *The American Heritage Dictionary of the English Language* defines the verb “identify” as “[t]o establish or recognize the identity of” or to “ascertain as a certain person” *Identify*, *The American Heritage Dictionary of the English Language* 872 (5th ed. 2011). And it defines the verb “locate” as “[t]o place at a certain location” *Locate*, *The American Heritage Dictionary of the English Language* 1029 (5th ed. 2011).
- 7 Unless otherwise noted, all references to Florida Statutes will be to those that were on the books in 2018, the year Marsy’s Law was ratified.
- 8 Of course, a victim may be illegally defamed or threatened even if his or her physical location is unknown. See, e.g.,  [§ 784.048\(1\)\(a\)](#), Fla. Stat. (“‘Harass’ means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.”). Our decision today does not lessen a victim’s protection from such harassment, even if it is accomplished without reference to his or her physical location. We conclude only that the plain language of Marsy’s Law, correctly

understood in its constitutional context, does not guarantee in every case a victim's right to avoid such harassment by remaining anonymous.

- 9 Neither shooting at issue here resulted in a trial because, in each case, the assailant perished and the grand jury concluded the police officer's conduct was lawful. While we therefore have no occasion to rule upon any specific confrontation-related objection or argument to a victim's invocation of Marsy's Law made at a trial, we nonetheless consider the confrontation clause because determining the original public meaning of Marsy's Law requires us to consult its constitutional context. See *Advisory Op. to Governor—1996 Amend. 5 (Everglades)*, 706 So. 2d 278, 281 (Fla. 1997) (“Amendment 5 does not exist in isolation; it was incorporated into an existing section Where the constitution contains multiple provisions on the same subject, they must be read in *pari materia* to ensure a consistent and logical meaning that gives effect to each provision.”).
- 10 “In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him” *Amend. VI, U.S. Const.* In an earlier case, after “[n]oting the similarities between the confrontation clauses of the federal and Florida constitutions, we perceive[d] no reason to interpret [article I, section 16, of the Florida Constitution](#) any differently than its federal counterpart” on the issue then before us.  *Perez v. State*, 536 So. 2d 206, 209 n.4 (Fla. 1988). No party has suggested a reason to think that the original public meanings of the clauses differ with respect to witness anonymity as that issue is presented in this case. But in interpreting the words of our state Constitution, we remain “bound under federalist principles to give primacy to our state Constitution and to give independent legal import to every phrase and clause contained therein.”  *Taylor v. State*, 596 So. 2d 957, 962 (Fla. 1992).
- 11 A confrontation right was guaranteed in Florida's first constitution, which provided “[t]hat in all criminal prosecutions, the accused hath a right ... to be confronted with the witnesses against him.” *Art. I, § 10, Fla. Const. (1838)*. The language remained the same in Florida's next two constitutions, see *art. I, § 10, Fla. Const. (1861)*; *art. I, § 10, Fla. Const. (1865)*, but the clause was omitted from the 1868 Constitution. In 1885, it was reinserted, and provided that, “[i]n all criminal prosecutions, the accused shall have the right ... to meet the witnesses against him face to face.” *Declaration of Rights, § 11, Fla. Const. (1885)*. The clause took its present form in 1968. See *art. I, § 16(a), Fla. Const.*
- 12 The “principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of *ex parte* examinations as evidence against the accused.”  *Crawford v. Washington*, 541 U.S. 36, 50, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004); see also  *Mattox v. United States*, 156 U.S. 237, 242, 15 S.Ct. 337, 39 L.Ed. 409 (1895) (“The primary object of the constitutional provision in question was to prevent depositions or *ex parte* affidavits, such as were sometimes admitted in civil cases, being used against the prisoner in lieu of a personal examination and cross-examination of the witness”);  *California v. Green*, 399 U.S. 149, 179, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970) (Harlan, J., concurring) (“From the scant information available it may tentatively be concluded that the Confrontation Clause was meant to constitutionalize a barrier against flagrant abuses, *trials by anonymous accusers*, and absentee witnesses.”) (emphasis added). In light of this history and the constitutional text, the United States Supreme Court has concluded that the clause “forbids the introduction of out-of-court ‘testimonial’ statements unless the witness is unavailable and the defendant has had the chance to cross-examine the witness previously.” *Samia v. United States*, 599 U.S. 635, 143 S. Ct. 2004, 2012, 216 L.Ed.2d 597 (2023) (citing  *Crawford*, 541 U.S. at 53-54, 124 S.Ct. 1354). Examples of testimonial statements include “[s]tatements taken by police officers in the course of interrogations” and “*ex parte* testimony at a preliminary hearing.”  *Crawford*, 541 U.S. at 52, 124 S.Ct. 1354.

- 13 Our decision in  [Hollander](#) squares with our conclusion today. Although that case required only that we address alleged deficiencies in the ballot title and summary of the proposed constitutional amendment that would become Marsy's Law, we concluded that “[t]he title and summary are not misleading because the actual text of the proposed amendment does not restrict any existing defendants’ ... rights or subordinate any existing defendants’ ... rights to the newly created victims’ rights.”  [Hollander](#), 256 So. 3d at 1308. We identified possible close calls such as a “victims’ right to a speedy trial” and “the time constraints and reporting requirements for appeals and collateral attacks”—each now codified under section 16(b)(10)—but did not discuss any possible right of crime victims to prevent the disclosure of their names.  [Id.](#) at 1308, 1309.
- 14 Because the confrontation right is also enshrined in the [federal constitution, Amend. VI](#), U.S. Const., and applicable in state prosecutions,  [Pointer v. Texas](#), 380 U.S. 400, 403, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965), we are mindful of the “elementary rule ... that every reasonable construction must be resorted to in order to save a [provision] from unconstitutionality,”  [Hooper v. California](#), 155 U.S. 648, 657, 15 S.Ct. 207, 39 L.Ed. 297 (1895). That rule's application here supports our holding.
- 15 It is unclear from the record whether the Coalition filed a similar request regarding the first shooting.
- 16 Notably,  [section 119.071\(4\)\(d\)2.a.](#), Florida Statutes, makes exempt from public records requirements “[t]he home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel” Conspicuously missing, however, are their names (despite the names of their “spouses and children” being so protected in the very same provision). *Id.*

358 So.3d 18

District Court of Appeal of Florida, Fourth District.

Michael E. JACKSON, Appellant,

v.

CITY OF SOUTH BAY, Florida, South Bay
 Canvassing Board, Palm Beach County Canvassing
 Board, Wendy Sartory Link, in her Official
 Capacity as Supervisor of Elections, Palm Beach
 County, Florida, and Esther E. Berry, Appellees.

No. 4D21-3503

|

[February 15, 2023]

Synopsis

Background: Candidate who ran for city commissioner and lost by one vote issued a public records request, requesting copies of canvassing board meeting minutes pertaining to the election, then filed a complaint alleging violations of Florida's Sunshine Law and Florida's Public Records Act and seeking attorney's fees under both statutes. The Circuit Court, 15th Judicial Circuit, Palm Beach County, [Scott Kerner, J.](#), found no violation of either statute and therefore no entitlement to attorney's fees. Candidate appealed.

Holdings: The District Court of Appeal, [Levine, J.](#), held that:

[1] city, county canvassing board, and county supervisor of elections did not violate the Public Records Act, but

[2] there was a Sunshine Law violation when they took nearly five months to produce one day of meeting minutes.

Affirmed in part, reversed in part, and remanded with instructions.

Procedural Posture(s): On Appeal; Motion for Attorney's Fees.

West Headnotes (14)

[1] **Records** 🔑 [Scope, Standard, and Extent of Further Review](#)

A trial court's factual findings involving an alleged Public Records Act violation are reviewed for competent substantial evidence, while its interpretation of the law is reviewed de novo. [Fla. Stat. Ann. § 119.01 et seq.](#)

[2] **Records** 🔑 [Questions of law or fact](#)

Whether a governmental entity acted in good faith in manner in which it responded to a request for disclosure of public records is necessarily a question for court to decide based on circumstances of a case. [Fla. Stat. Ann. § 119.07\(1\)\(c\).](#)

[3] **Records** 🔑 [Time for Response](#)

Where delay is at issue in an alleged Public Records Act violation, court must determine whether delay was justified under facts of particular case. [Fla. Stat. Ann. § 119.01 et seq.](#)

[1 Case that cites this headnote](#)

[4] **Records** 🔑 [Right of Access in General](#)

Records 🔑 [Under constitutional provisions](#)

The Public Records Act, like the Florida Constitution, guarantees a right of access to public records. [Fla. Const. art. 1, § 24\(a\); Fla. Stat. Ann. § 119.01\(1\).](#)

[1 Case that cites this headnote](#)

[5] **Records** 🔑 [Costs and Fees](#)

Unlawful refusal under the Public Records Act, warranting an award of attorney fees, includes not only affirmative refusal to produce records, but also unjustified delay in producing them. [Fla. Stat. Ann. § 119.12\(1\)\(a\).](#)

[1 Case that cites this headnote](#)

[6] **Records** 🔑 [Particular cases](#)

City, county canvassing board, and county supervisor of elections did not violate the Public Records Act in response to request

from candidate who lost election for city commissioner for copies of canvassing board meeting minutes pertaining to the election; city produced all meeting minutes at issue, except for minutes from one day, before an agreed-upon deadline with candidate's counsel, discovery of minutes missing from one day and their prompt production upon discovery was result of a good faith response, and delay in production of missing minutes did not amount to an unlawful refusal but rather was justified under the circumstances.  Fla. Stat. Ann. §§ 119.07(1)(c),  119.12(1)(a).

[7] **Records** Preservation of error; waiver and estoppel; record

Candidate who lost election for city commissioner, requested copies of canvassing board meeting minutes pertaining to the election, then filed a complaint alleging violations of the Public Records Act, did not preserve claim of a Public Records Act violation by city due to destruction of handwritten meeting notes, where that issue was not addressed in final judgment and candidate did not move for rehearing challenging trial court's lack of findings concerning handwritten notes. Fla. R. Civ. P. 1.530(a).

[8] **Administrative Law and Procedure** Trial or review de novo

Administrative Law and Procedure Findings; evidence

A trial court's factual findings involving an alleged Sunshine Law violation are reviewed for competent substantial evidence, while its interpretation of the law is reviewed de novo.

 Fla. Stat. Ann. § 286.011.

[9] **Administrative Law and Procedure** Effect of violation of open meetings laws in general

Mere showing that government in the Sunshine Law has been violated constitutes an irreparable public injury.  Fla. Stat. Ann. § 286.011.

[10] **Administrative Law and Procedure** Open Meetings Requirement; Sunshine Laws

The Sunshine Law should be construed so as to frustrate all evasive devices.  Fla. Stat. Ann. § 286.011.

[11] **Election Law** Powers and proceedings of canvassers as to returns

There was a Sunshine Law violation when city, county canvassing board, and county supervisor of elections took nearly five months to produce one day of canvassing board meeting minutes pertaining to city commissioner election in response to request from candidate who lost the election; meeting minutes from that day clearly were not open to public inspection where city, canvassing board, and supervisor of elections were unaware of their existence, and busy election, pandemic, and good faith conduct did not justify the five-month delay in production or excuse compliance with the Sunshine Law.

 Fla. Stat. Ann. § 286.011.

[12] **Election Law** Preservation of grounds of review

Candidate who lost election for city commissioner, requested copies of canvassing board meeting minutes pertaining to the election, then filed a complaint alleging violations of the Sunshine Law, did not preserve claim of a Sunshine Law violation for failure to produce minutes from a meeting on one specific day, where that issue was not addressed in final judgment and candidate did not move for rehearing challenging lack of findings concerning that specific day.  Fla. Stat. Ann. § 286.011; Fla. R. Civ. P. 1.530(a).

[13] Administrative Law and Procedure 🔑 Open Meetings Requirement; Sunshine Laws

The use of the word “shall” in the Sunshine Law requires mandatory compliance. 🇺🇸 Fla. Stat. Ann. § 286.011.

[14] Constitutional Law 🔑 Constitutional Rights in General

There is no pandemic-related exception to the Constitution.

*20 Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; [Scott R. Kerner](#), Judge; L.T. Case No. 50-2020-CA-004756-XXXX-MB.

Attorneys and Law Firms

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Pamela C. Marsh and Virginia M. Hamrick for First Amendment Foundation, Tallahassee, Amicus Curiae on behalf of appellant.

Opinion

[Levine, J.](#)

Michael Jackson appeals a final judgment finding that the Palm Beach County Canvassing Board and the Palm Beach County Supervisor of Elections (“appellees”) did not violate Florida’s Sunshine Law or Public Records Act and therefore Jackson was not entitled to attorney’s fees. As to the Public Records Act, we affirm on all issues. However, we find the delay in the production of the March 13 meeting *21 minutes was a violation of the Sunshine Law. As to this issue, we reverse.

Jackson ran for South Bay City Commissioner in the March 17, 2020 municipal election and lost by one vote. On April 24, 2020, Jackson issued a public records request, requesting copies of the canvassing board meeting minutes pertaining to the March 17 election. Jackson then filed a complaint contesting the election results. Jackson later amended his complaint to allege violations of Florida’s Sunshine Law and Florida’s Public Records Act and sought attorney’s fees under both statutes.

All of the meeting minutes, except for the March 13, 2020 minutes, were produced before a deadline suggested by Jackson’s counsel. At the time of Jackson’s records request, appellees did not realize a canvassing board meeting had occurred on March 13. Appellees’ calendars did not contain an entry for that date. Upon receiving notes indicating a canvassing board meeting had occurred on March 13, appellees tried to access data from the laptop of the person responsible for taking the minutes, but the laptop was broken. The minutes were then retrieved from the minute-taker’s email and immediately produced upon discovery to Jackson on September 18, 2020.

The trial court found Jackson’s election contest untimely. That finding is not challenged on appeal. The trial court also found no violation of the Sunshine Law or Public Records Act and therefore no entitlement to attorney’s fees.

Specifically, the trial court found that Jackson’s public records request occurred during a “busy election” in the “throes of a pandemic” with stay-at home orders in effect and that appellees acted in good faith in assembling and producing the records. The trial court concluded no violation of the Sunshine Law occurred because there was “no evidence—particularly under the extraordinary circumstances of the day—from which the Court can conclude, using ‘common sense or principles of logic’ that the meeting minutes were neither ‘promptly recorded’ nor ‘open to public inspection.’ ” The trial court also concluded no Public Records Act violation occurred because appellees did not “unlawfully refuse[]” a public records request. The trial court found that appellees produced all of the meeting minutes, except for the March 13 minutes, before “an agreed production date.” Finally, the trial court found that appellees were “unaware” of the March 13 minutes and that those minutes were promptly produced upon discovery in September 2020.

A. Public Records Act

On appeal, Jackson argues that appellees' unreasonable delay in the production of meeting minutes violated the Public Records Act.

[1] [2] [3] A trial court's factual findings involving an alleged Public Records Act violation are reviewed for competent substantial evidence, while its interpretation of the law is reviewed de novo. *Nat'l Council on Comp. Ins. v. Fee*, 219 So. 3d 172, 177 (Fla. 1st DCA 2017); see also *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 761 (Fla. 2010). "Whether a governmental entity acted in 'good faith' in the manner in which it responded to a request for disclosure of public records is necessarily a question for the court to decide based on the circumstances of a case." *Consumer Rights, LLC v. Union Cnty., Fla.*, 159 So. 3d 882, 885 (Fla. 1st DCA 2015). "Where delay is at issue ... the court must determine whether the delay was justified under the facts of the particular case." *22 *Citizens Awareness Found., Inc. v. Wantman Grp., Inc.*, 195 So. 3d 396, 399 (Fla. 4th DCA 2016) (citation omitted).

[4] [5] Florida's Constitution provides: "Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf" *Art. I, § 24(a), Fla. Const.* The Public Records Act also guarantees a right of access to public records. § 119.01(1), Fla. Stat. (2021). Pursuant to the act, a records custodian must respond to public records requests "in good faith." § 119.07(1)(c), Fla. Stat. (2021). The court shall award attorney's fees where an "agency unlawfully refused to permit a public record to be inspected" § 119.12(1)(a), Fla. Stat. (2021). "Unlawful refusal under section 119.12 includes not only affirmative refusal to produce records, but also unjustified delay in producing them." *Citizens Awareness Found.*, 195 So. 3d at 399 (citation omitted).

[6] [7] The trial court did not err in finding no violation of the Public Records Act. The trial court made a factual determination, after an evidentiary hearing, that appellees produced all of the meeting minutes at issue, except for the March 13 minutes, one day before "an agreed production date" of June 4. This factual finding is entitled to deference because it is supported by competent substantial evidence in the record. *Fee*, 219 So. 3d at 177. Because appellees produced those minutes before an agreed upon deadline, Jackson cannot now complain that he should have received

those minutes earlier. Additionally, the discovery of the March 13 minutes, and their prompt production upon discovery, was the result of a "good faith response." "A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed." § 119.07(1)(c), Fla. Stat. The delay in production of the March 13 minutes did not amount to an "unlawful refusal"; rather the delay was justified under the circumstances of this particular case. See § 119.12(1)(a), Fla. Stat. (providing for attorney's fees where an "agency unlawfully refused to permit a public record to be inspected"); *Consumer Rights*, 159 So. 3d at 885 (finding that a four-month delay in providing records was not "the functional equivalent of an unlawful refusal" because the delay was caused by concerns regarding the authenticity of the requestor's email).¹

B. Sunshine Law

Jackson also argues that appellees violated the Sunshine Law by failing to promptly record and make available for public inspection meeting minutes from March 13.

[8] A trial court's factual findings involving an alleged Sunshine Law violation are reviewed for competent substantial evidence, while its interpretation of the law is reviewed de novo. *Fee*, 219 So. 3d at 177; see also *Sarasota Citizens for Responsible Gov't*, 48 So. 3d at 761.

*23 Section 286.011(2), Florida Statutes (2021), states: "The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection." Additionally, "the court shall assess a reasonable attorney's fee" where an action is filed "to enforce the provisions of this section ... and the court determines that the defendant or defendants to such action acted in violation of this section" § 286.011(4), Fla. Stat. (2021).

In interpreting a statute, the starting point of analysis is the actual statutory language. *United Auto. Ins. Co. v. Chironex Enters., Inc.*, 352 So. 3d 341, 344 (Fla. 4th DCA 2022) (citation omitted). When a statute is unambiguous, a court need not resort to other rules of statutory construction. *Id.*

[9] [10] “Few, if any, governmental boards or agencies deliberately attempt to circumvent the government in the sunshine law.” *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 476 (Fla. 1974). “Mere showing that the government in the sunshine law has been violated constitutes an irreparable public injury” *Id.* at 477. “The statute should be construed so as to frustrate all evasive devices.” *Id.*

[11] The trial court erred in finding no Sunshine Law violation as to the March 13 meeting minutes. Under section 286.011, meeting minutes “shall be promptly recorded” and “shall be open to public inspection.” The March 13 meeting minutes clearly were not open to public inspection where appellees were “unaware” of their existence, as stated by the trial court. Jackson requested the minutes on April 24, but they were not produced until September 18, nearly five months later.

[12] [13] [14] The trial court cited the “busy election,” the pandemic, and appellees’ good faith conduct as justification for the delay in the production of the March 13 minutes. However, none of these factors excuse compliance with section 286.011. The use of the word “shall” in section 286.011 requires mandatory compliance. See *DeGregorio v. Balkwill*, 853 So. 2d 371, 374 (Fla. 2003). Additionally, section 286.011, unlike the Public Records Act, does not have a good faith exception. See § 119.07(1)(c), Fla. Stat. (stating that public records custodian must respond “in

good faith” to requests to inspect or copy records). Further, there is no pandemic related exception to the constitution.

See *E.A.C. v. State*, 324 So. 3d 499, 509 (Fla. 4th DCA 2021) (Levine, C.J., concurring). Indeed, Executive Order 20-69, which was issued on March 20, 2020 in response to the pandemic, expressly recognized that the Sunshine Law remained in effect: “This Executive Order does not waive any other requirement under the Florida Constitution and ‘Florida’s Government in the Sunshine Laws,’ including Chapter 286, Florida Statutes.”²

Because the trial court erred in finding no violation of the Sunshine Law with respect to the March 13 meeting minutes, we reverse as to this issue. We remand for the trial court to determine a reasonable amount of attorney’s fees and costs for the Sunshine Law violation related only to the March 13 meeting minutes. See *Fla. Patient’s Comp. Fund v. Rowe*, 472 So. 2d 1145, 1151 (Fla. 1985) (recognizing that *24 attorney’s fees are awardable only on successful claims). We affirm as to all of the other remaining issues.

Affirmed in part, reversed in part, and remanded with instructions.

May and Conner, JJ., concur.

All Citations

358 So.3d 18, 48 Fla. L. Weekly D371

Footnotes

- 1 Jackson also claims a Public Records Act violation due to the destruction of handwritten meeting notes. This issue is not preserved because it was not addressed in the final judgment and Jackson did not move for rehearing challenging the trial court’s lack of findings concerning the handwritten notes. See Fla. R. Civ. P. 1.530(a) (“To preserve for appeal a challenge to the sufficiency of a trial court’s findings in the final judgment, a party must raise that issue in a motion for rehearing under this rule.”); *In re Amends. to Fla. R. Civ. P. 1.530*, 346 So. 3d 1161, 1162 (Fla. 2022) (recognizing that the amendment to rule 1.530 clarified existing law).
- 2 Jackson also claims a Sunshine Law violation for the failure to produce minutes from an April 1, 2020 meeting. That issue is not preserved because it was not addressed in the final judgment and Jackson did not move for rehearing challenging the lack of findings concerning the April 1 audit. See Fla. R. Civ. P. 1.530(a); *In re Amends. to Fla. R. Civ. P. 1.530*, 346 So. 3d at 1162.

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