

IN THE DISTRICT COURT IN AND FOR POTTAWATOMIE COUNTY
STATE OF OKLAHOMA

FILED

JUN 07 2021

POTTAWATOMIE COUNTY, OK
VALERIE N. UELTZEN, COURT CLERK
BY _____ DEPUTY

FRONTIER MEDIA GROUP, INC. and)
KASSIE L. DANIEL,)
Plaintiffs,)

vs.)

Case No. **CV-21-93**

POTTAWATOMIE COUNTY PUBLIC)
SAFETY CENTER TRUST and BREONNA)
R. THOMPSON in her official capacity as)
EXECUTIVE DIRECTOR of POTTAWATOMIE)
COUNTY PUBLIC SAFETY CENTER TRUST,)
Defendants.)

PETITION FOR RELIEF FOR
VIOLATIONS OF THE OKLAHOMA OPEN RECORDS ACT

Plaintiffs Frontier Media Group, Inc. and Kassie L. Daniel (collectively "Plaintiffs"), by and through their undersigned counsel, petition this Court pursuant to the Oklahoma Open Records Act ("ORA"), Okla. Stat. tit. 51, §§ 24A.1-24A.32, for (1) a declaration of the rights and responsibilities of Defendant Pottawatomie County Public Safety Center Trust and Defendant Breonna R. Thompson in her official capacity as Executive Director of Pottawatomie County Public Safety Center Trust (collectively "Defendants") as to the public records sought by Plaintiffs; (2) an order enjoining Defendants from continuing to deny access to specific public records requested by Plaintiffs; and (3) a writ of mandamus pursuant to Okla. Stat. tit. 12, §§ 1451-1462 requiring Defendants to immediately disclose the requested records to Plaintiffs.

In support of this Petition, Plaintiffs allege and state the following:

PARTIES

1. Plaintiff Frontier Media Group, Inc. (“The Frontier”) is a nonprofit news corporation that produces illuminating journalism as a public service for the benefit of all Oklahomans. The Frontier makes its content freely and openly available on its website (readfrontier.org) and various social media platforms.

2. Plaintiff Kassie L. Daniel (“Daniel”), known in a professional capacity as Kassie McClung, is a journalist and Senior Reporter at The Frontier, where she covers criminal justice and other state issues.

3. Defendant Pottawatomie County Public Safety Center Trust (“PCPSCT”) is a “public body” within the meaning of the ORA. Okla. Stat. tit. 51, § 24A.3(2).

4. Defendant Breonna R. Thompson (“Thompson”) is a natural person and currently serves as the Executive Director of PCPSCT. Thompson is a “public official” within the meaning of the ORA. *Id.* § 24A.3(4).

STATEMENT OF FACTS

A. Background Facts

5. PCPSCT operates the county jail for Pottawatomie County, the Pottawatomie County Public Safety Center. Since May of 2017, the jail has been under Thompson’s direction.

6. In January of 2019, Ronald Gene Given (“Given”), a member of the Kiowa Tribe, entered a Shawnee store in a frenzied state. *See* Kassie McClung, ‘*There’s Not a Day That Goes by That It Is Not on My Mind: What Happened to Ronald Given?*’, The Frontier (March 25, 2021), <https://www.readfrontier.org/stories/theres-not-a-day-that-goes-by-that-it-is-not-on-my-mind-what-happened-to-ronald-given/> [<https://perma.cc/4GNS-XEQN>]. Police

responded to the incident and took Given to a local hospital for assessment, where healthcare providers deemed him in need of emergency detention at a state behavioral health center. *Id.* But because every such facility in Oklahoma was full, Given instead ended up at the Pottawatomie County Public Safety Center. *Id.*

7. Given was at the county jail for fewer than 10 hours before he was transported to a hospital following the alleged use of force by jail employees. *Id.* Approximately eight days later, he died. *Id.*

8. A spokeswoman for the Shawnee Police Department stated that the department was told there was a struggle between Given and jail staff. *Id.*

9. A report from the state's medical examiner found Given died from organ failure caused by cardiac arrhythmia from struggling as officers restrained him. *Id.* The medical examiner ruled the death a homicide. *Id.*

10. A lawsuit filed in federal court alleges Given was placed in a cell by himself and removed his clothing, prompting a jail employee to enter Given's cell. *See Complaint at 9, Kopaddy v. Pottawatomie County Public Safety Center*, No. 5:2020cv01280, PACER (W.D. Okla. Dec. 22, 2020). The jail employee struck Given, which "caused Mr. Given to fall to the floor hitting the back of his head on the concrete floor of the cell." *Id.* Two additional jail employees then entered Given's cell:

The two officers attempted to restrain Mr. Given's arms while he laid flat on his back and the third officer placed his knee into the neck of Mr. Given. The neck restraint remained until Mr. Given showed signs of unconsciousness. Mr. Given laid motionless and after he showed no signs of breathing, three additional John/Jane Doe, employees/officers of the Potawatomie Public Safety Center, entered the cell and took turns attempting to revive Mr. Given. Mr. Given never responded to the cardiopulmonary resuscitation (CPR) and two individuals grabbed his arms while the other two grabbed his feet and transported Mr. Given out of the cell to an unknown location. *Id.*

Given was later transported to a hospital, but never regained consciousness; a medical report stated he likely suffered anoxic brain injury from prolonged resuscitation and showed total brain death. *Id.* at 10.

11. Given's family and friends, as well as other community members, have actively sought more information about the circumstances surrounding his death. See Kassie McClung, *For Those Struggling with Addiction or Mental Health, Oklahoma Jails Can be Deadly*, The Frontier (Feb. 5, 2020), <https://www.readfrontier.org/stories/for-those-struggling-with-addiction-or-mental-health-oklahoma-jails-can-be-deadly/> [<https://perma.cc/GAL7-DPGD>]; Kassie McClung, *Amid Nationwide Protests, Group Renews Call for 'Justice' in Shawnee Man's Death*, The Frontier (June 6, 2020), <https://www.readfrontier.org/stories/nationwide-protests-group-renews-call-for-justice-in-shawnee-mans-death/> [<https://perma.cc/VA49-5LB3>].

B. Plaintiffs' Oklahoma Open Records Act Requests

12. On November 1, 2019, Daniel, in her role as a reporter for The Frontier, faxed PCPSCT a written ORA request for "access to and a copy of any and all records related to the custody of Ronald Gene Given, including the booking sheets, video, mugshots, and incident reports" (hereinafter the "First Request"). A true and correct copy of Plaintiffs' First Request is attached as **Exhibit A**.

13. PCPSCT responded to Daniel via email shortly after she submitted her First Request. A true and correct copy of PCPSCT's response is attached as **Exhibit B**. PCPSCT's response told Daniel that she must instead submit a written ORA request in person to the PCPSCT administrative offices. PCPSCT's response further stated that "[s]hould you take the proper steps for open records request [sic] the Booking report and

Release Report for RONALD GENE GIVEN will be provided to you.” Ex. B. The response further stated that certain information would be “blacked out.” *Id.* The response did not mention the videos, mugshots, or incident reports requested by Daniel. *Id.*

14. On November 6, 2019, Daniel delivered a written ORA request in person to the PCPSCT administrative offices requesting “access to and a copy of any and all records related to the custody of Ronald Gene Given, including the booking sheet, release sheet, any existing video of Given at the jail, mugshots and incident reports related to use of force or injury” (hereinafter the “Second Request”). A true and correct copy of Plaintiffs’ Second Request is attached as **Exhibit C**.

15. Aside from the booking sheet and release sheet related to Given, Plaintiffs have not received any of the requested records from PCPSCT or been given any further justification as to why PCPSCT has refused to turn over the requested records.

16. Plaintiffs’ counsel contacted PCPSCT via email on April 13, 2021, and informed PCPSCT that Daniel was still awaiting a response to her Second Request and reminding PCPSCT of its duty to provide prompt, reasonable access to public records. Plaintiffs’ counsel also requested PCPSCT provide a written response if the requested records did not exist or if PCPSCT believed an ORA exemption or exception applied to the records. A true and correct copy of Plaintiffs’ counsel’s April 13 correspondence to PCPSCT is attached as **Exhibit D**.

17. Tina H. Romena (“Romena”), an “Administrative Supervisor” for PCPSCT, responded on April 14, 2021, stating that PCPSCT “does not receive requests via email” and requesting that Plaintiffs’ counsel resubmit a written request via postal mail to the facility. A true and correct copy of Romena’s April 14 response is included in the email chain attached

as **Exhibit E**. Romena further stated that “your client was already provided a letter explaining the public records we keep here at the facility and the reasons for exemption, if any.” Ex. E.

18. The following day—April 15, 2021—Plaintiffs’ counsel responded to Romena via email, clarifying that her April 13 correspondence was in reference to a prior, already-submitted request for public records made by Daniels and was an attempt to resolve the matter without resorting to litigation. A true and correct copy of Plaintiffs’ counsel’s April 15 response is included in the email chain attached as **Exhibit E**.

19. Romena responded to Plaintiffs’ counsel via email later on April 15, 2021, stating in part, “[a]gain we do not accept any such communication including your matter via email.” A true and correct copy of Romena’s April 15 response is included in the email chain attached as **Exhibit E**.

20. As of the filing of this Petition, PCPSCT has not made any records (besides the booking sheet and release sheet related to Given) available to Plaintiffs in response to the Second Request or sent any further correspondence to Plaintiffs or Plaintiffs’ counsel regarding the Second Request.

CAUSE OF ACTION

Violation of the ORA for Unlawful Withholding of Records Responsive to Plaintiffs’ Second Request

(All Defendants)

21. Plaintiffs repeat, reallege, and incorporate the allegations set forth in paragraphs 1 to 20 as though fully set forth herein.

22. Under the ORA, “all records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction.” Okla. Stat. tit. 51,

§ 24A.5. In order to effectuate this right of access, “a public body must provide prompt, reasonable access to its records.” *Id.* § 24A.5(6).

23. The records sought by Plaintiffs through the Second Request are records of public bodies and public officials, as defined by the ORA. *Id.* § 24A.3.

24. Defendants have failed to provide prompt, reasonable access to records responsive to Plaintiffs’ Second Request, and have failed to assert any provision of the law that would allow those records to lawfully be withheld.

25. Defendants have unlawfully denied access to and withheld records that are responsive to Plaintiffs’ Second Request.

26. Defendants’ denials and withholding of records requested by Plaintiffs in the Second Request is an abrogation of their duties under the ORA and a violation of the ORA.

RELIEF REQUESTED

Therefore, Plaintiffs respectfully request pursuant to Okla. Stat. tit. 51, § 24A.17(B) that the Court:

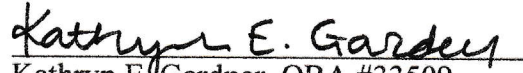
A. Declare (1) the records sought by Plaintiffs are public records for the purposes of the ORA; (2) Plaintiffs are entitled to prompt disclosure of the requested records; and (3) Defendants’ withholding of public records responsive to Plaintiffs’ Second Request is unlawful.

B. Grant an injunction and/or issue a writ of mandamus pursuant to Okla. Stat. tit. 12, §§ 1451-1462 requiring Defendants to immediately disclose all records requested by Plaintiffs pursuant to the ORA.

C. Award Plaintiffs reasonable attorneys’ fees in this action, pursuant to Okla. Stat. tit. 51, § 24A.17(B)(2).

D. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,



Kathryn E. Gardner, OBA #33509

Reporters Committee for Freedom of the Press

110 S. Hartford Ave., Ste. 2524

Tulsa, OK 74120

T: (918) 255-0060

kgardner@rcfp.org

Counsel for Plaintiffs

The Frontier and Daniel

Exhibit A

Nov. 1, 2019

Pottawatomie County Public Safety Center:

Pursuant to the state open records law Okla. Stat. Tit. 51, Secs. 24A.1 to 24A.29, I write to request access to and a copy of any and all records related to the custody of Ronald Gene Given, including booking sheets, video, mugshots and incident reports. Given, age 42, was incarcerated at the jail in January 2019.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees, but please call me in advance to notify me of the amount. Please provide a receipt indicating the charges for each document. I can accept the records electronically or by mail.

If you choose to deny this request, please provide a written explanation for the denial, including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material, as required by law.

Please feel free to call me at 918-935-1044 with any questions. I look forward to hearing from you and appreciate your assistance.

Sincerely,

Kassie McClung
Reporter — The Frontier
918-935-1044
kassie@readfrontier.com

Exhibit B

Ms. McClung:

This is response to your faxed request for records. This is not the normal or accepted method for requesting Open Records from our agency. You must submit this request, in writing on your company letterhead (if asking for a business or organization), or if personal request also in writing. Both of these written requests, either business or personal, must be presented in person in our administration offices between the hours of 9AM to 4PM Monday - Friday. Based upon our staffing, location, and facility constraints, it is neither typical nor practical to compile outgoing mailings for open records requests.

Should you make this request as specified above we will address your request in the following manner:

Per Oklahoma State Statute Title 51 Section 24A.8 under "A" it specifically states "if kept". We are not the arresting law enforcement agency or officers, but we do keep some of these records. However, most are maintained by the arresting law enforcement agency and courts. The records we keep as a part of our normal record keeping process that fall in the category as defined by open records statutes are as follows:

A Number 1: "An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee", all except we typically do not keep occupation records.

A Number 2: The only part of this section maintained in our records is the name of the arresting officer and the name of the arresting agency.

A Number 3 - 7: are not items we are required to retain, nor do we retain in our records or records keeping practices.

A Number 8: specifically applies to jail operations and is all that we are required to keep by the open records statutes - jail booking information showing the inmate's name with the date of admission, cause of commitment, the authority committing the inmate, if committed for a criminal offense, a description of the inmate, and the date or manner of his discharge or escape.

Should you take the proper steps for open records request the Booking report and Release Report for RONALD GENE GIVEN will be provided to you. You will notice some blacked out information. This is as a result of the following:

Specifically under § 24A.8.B: "*Except for the records listed in subsection A of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records*".

As a condition of the above section, we do not release an inmate's social security number, phone number, and any other personal information not required by law, if kept by our agency, as stated in Section A.

Further, under no part of section A are we required to release the names of our agency's officers and personnel specific to an inmate unless they are the arresting officer or arresting agency.

Exhibit C

Pottawatomie County Public Safety Center:

Nov. 6, 2019

Pursuant to the state open records law Okla. Stat. Tit. 51, Secs. 24A.1 to 24A.29, I write to request access to and a copy of any and all records related to the custody of Ronald Gene Given, including the booking sheet, release sheet, any existing video of Given at the jail, mugshots and incident reports related to use of force or injury. Given, age 42, was incarcerated at the jail in January 2019.

State City and County Detention Facility Standards, Title 310:670-5-2, Sect. 23 requires facilities to document any use of physical force by staff. The standards also require agencies to report to the state's Jail Inspection Division any injury requiring transfer to an outside medical facility.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees, but please call me in advance to notify me of the amount. Please provide a receipt indicating the charges for each document. I can accept the records electronically or by mail.

If you choose to deny this request, please provide a written explanation for the denial, including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material, as required by law.

Please feel free to call me at 918-935-1044 with any questions. I look forward to hearing from you and appreciate your assistance.

Sincerely,

Kassie McClung
Reporter
The Frontier
918-935-1044
kassie@readfrontier.com

Exhibit D

REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

1156 15th St. NW, Suite 1020
Washington, D.C. 20005
(202) 795-9300
www.rcfp.org

Bruce D. Brown
Executive Director
bbrown@rcfp.org
(202) 795-9301

STEERING COMMITTEE CHAIRMAN

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MANNY GARCIA
Austin American-Statesman

EMILIO GARCIA-RUIZ
San Francisco Chronicle

JOSH GERSTEIN
POLITICO

ALEX GIBNEY
Jigsaw Productions

SUSAN GOLDBERG
National Geographic

JAMES GRIMALDI
The Wall Street Journal

LAURA HANDMAN
Davis Wright Tremaine

DIEGO IBARGÜEN
Hearst

KAREN KAISER
The Associated Press

DAVID LAUTER
The Los Angeles Times

MARGARET LOW
WBUR

JANE MAYER
The New Yorker

COLLEEN MCCAIN NELSON
The McClatchy Company

MAGGIE MULVIHILL
Boston University

JAMES NEFF
The Philadelphia Inquirer

NORMAN PEARLSTINE
New York, New York

THOMAS C. RUBIN
Stanford Law School

CHARLIE SAVAGE
The New York Times

JENNIFER SONDAG
Bloomberg News

NABIHA SYED
The Markup

ADAM SYMSON
The E.W. Scripps Company

PIERRE THOMAS
ABC News

SAUNDRA TORRY
Freelance

VICKIE WALTON-JAMES
NPR

JUDY WOODRUFF
PBS/The NewsHour

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Slate

TONY MAURO
American Lawyer Media, ret

ANDREA MITCHELL
NBC News

CAROL ROSENBERG
The New York Times

PAUL STEIGER
ProPublica

Affiliations annex only

Kathryn E. Gardner
110 S. Hartford Ave., Ste. 2524
Tulsa, OK 74120
Telephone: (918) 255-0060
Email: kgardner@rcfp.org

April 13, 2021

Pottawatomie County Public Safety Center Trust
Delivered via email only to admin@pcpsct.org

Re: Oklahoma Open Records Act Request

To whom this may concern:

I represent The Frontier in connection with a request for public records sought by Ms. Kassie McClung under the Oklahoma Open Records Act ("ORA"). 51 O.S. §§ 24A.1-24A.32. The Frontier is a non-profit, award-winning, media organization that produces investigative journalism as a public service for the benefit of all Oklahomans. Ms. McClung is a seasoned journalist and Senior Reporter at The Frontier who covers criminal justice, health, and other state issues for the news organization.

On November 6, 2019, Ms. McClung hand delivered an ORA request in writing to the administrative offices of the Pottawatomie County Public Safety Center Trust ("PCPSCT"), per your instructions, for the following public records:

"Any and all records related to the custody of Ronald Gene Given, including the booking sheet, release sheet, any existing video of Given at the jail, mugshots and incident reports related to the use of force or injury. Given, age 42, was incarcerated at the jail in January 2019."

For your reference and convenience, a copy of Ms. McClung's ORA request follows this letter at page three. PCPSCT has only provided Ms. McClung with the relevant booking sheet and release sheet in response to her request. Seventeen months later, Ms. McClung still awaits any relevant video or incident reports related to the use of force or injury.

The ORA requires you to provide prompt and reasonable access to public records. 51 O.S. § 24A.5(6). If the responsive records do not exist or are, in your opinion, exempt from the ORA, please provide a written response outlining that no records exist, or, in the alternative, which exception covers the requested public records. To the extent that you withhold records based upon an exemption or exception to the ORA, please detail your reason for

denial so that we may balance it against the interests of the public and/or relevant individuals.

Please comply with your duties under the ORA and fulfill Ms. McClung's ORA request within 15 business days. If a response will require more than 15 business days, please respond in writing indicating why a longer response time is required, as well as the anticipated response date for the requested records. If we do not receive records or a written response from you within 15 business days, we will accept this as a willful decision to withhold the requested records. The Frontier and Ms. McClung reserve all rights in relation to this matter.

Please do not hesitate to contact me with any questions. Thank you for your time and attention to this matter.

Respectfully,

A handwritten signature in black ink that reads "Kathryn E. Gardner". The signature is written in a cursive, slightly slanted style.

Kathryn E. Gardner
Attorney | Local Legal Initiative Oklahoma
Reporters Committee for Freedom of the Press

Pottawatomie County Public Safety Center:

Nov. 6, 2019

Pursuant to the state open records law Okla. Stat. Tit. 51, Secs. 24A.1 to 24A.29, I write to request access to and a copy of any and all records related to the custody of Ronald Gene Given, including the booking sheet, release sheet, any existing video of Given at the jail, mugshots and incident reports related to use of force or injury. Given, age 42, was incarcerated at the jail in January 2019.

State City and County Detention Facility Standards, Title 310:670-5-2, Sect. 23 requires facilities to document any use of physical force by staff. The standards also require agencies to report to the state's Jail Inspection Division any injury requiring transfer to an outside medical facility.

If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees, but please call me in advance to notify me of the amount. Please provide a receipt indicating the charges for each document. I can accept the records electronically or by mail.

If you choose to deny this request, please provide a written explanation for the denial, including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material, as required by law.

Please feel free to call me at 918-935-1044 with any questions. I look forward to hearing from you and appreciate your assistance.

Sincerely,

Kassie McClung
Reporter
The Frontier
918-935-1044
kassie@readfrontier.com

Exhibit E

letter sent via email

3 messages

tromena <tromena@pcpsct.org>
To: kgardner@rcfp.org

Wed, Apr 14, 2021 at 9:58 AM

I was forwarded your email by my assistant. This facility does not receive requests via email. Kindly resubmit a written letter mailed to our facility with your request. It should be noted that your client was already provided a letter explaining the public records we keep here at the facility and the reasons for exemption, if any. I will await your letter prior to addressing any further requests or concerns.

Thank you,

--
Tina Hutchinson Romena
Administrative Supervisor
PCPSC Trust
14209 HWY 177
Shawnee, OK 74804
405-273-0043 ext. 102

KatieBeth Gardner <kgardner@rcfp.org>
To: tromena <tromena@pcpsct.org>

Thu, Apr 15, 2021 at 11:29 AM

Ms. Romena:

I am contacting you on behalf of Ms. Kassie McClung and The Frontier regarding a previous request for public records in an attempt to resolve the matter without resorting to litigation. If there is someone else I should speak with in regards to this matter, such as legal counsel, please let me know and I will direct my correspondence to them. To be clear, I am not submitting a request for public records myself.

Ms. McClung has not yet received any relevant video or incident reports related to the use of force or injury in response to her request submitted to PCPSCT on November 6, 2019. It is our position that these are open records under the Oklahoma Open Records Act, 51 O.S. §§ 24A.1-24A.32, and PCPSCT is unlawfully withholding these records. Accordingly, the records should be promptly made available to Ms. McClung for inspection and copying.

If the records are not made available, the law entitles us to bring a civil suit to seek a judicial determination regarding Ms. McClung's request. If we are successful in a lawsuit under the Oklahoma Open Records Act, we may be entitled to reasonable attorney fees. However, litigation may be unnecessary if you are willing to promptly make the outstanding records available for inspection and copying. That is why I am reaching out to you today to see where PCPSCT stands in relation to the outstanding portions of Ms. McClung's request for open records.

I welcome your response if you would like to speak further about this matter and see if it can be resolved. If I do not hear further from you, I intend to move forward in the coming weeks with a lawsuit.

Thank you for your time and attention to this matter.
[Quoted text hidden]

Tina <tromena@pcpsct.org>
To: KatieBeth Gardner <kgardner@rcfp.org>

Thu, Apr 15, 2021 at 4:34 PM

Again we do not do accept any such communication including your matter via email. Please follow policy and provide written correspondence mailed to our address on letterhead as was initially requested in our response to you. No further response will be sent via email so kindly provide your address as well.

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