	NO. C-1051008 DIV. C
IN RE: PUBLIC RECORDS REQUEST OF	**18TH JUDICIAL DISTRICT COURT**
JOHN SUMMERS	**PARISH OF WEST BATON ROUGE**
	STATE OF LOUISIANA

MEMORANDUM IN SUPPORT OF MOTION FOR NEW TRIAL

NOW INTO COURT, through undersigned counsel, comes Defendant John Summers, who submits this Memorandum in Support of his Motion for New Trial, pursuant to Louisiana Code of Civil Procedure articles 1972(1) and 1973. Summers seeks a new trial on this matter, in which he was named Defendant by local government and cast in judgment by this Honorable Court, because the Judgment, signed May 13, 2026 and mailed May 20, 2026, grants relief that is outside the scope of the Petition, and the law and evidence warrant a new trial.

INTRODUCTION

Summers was sued by his local government for requesting public records—a rare and extraordinary occurrence in itself. Typically, public records lawsuits are brought by requestors; in this case, Summers, the requestor, had no immediate intention to file suit, as the parties were continuing to discuss ways to resolve potential disputes. Instead, Petitioners West Baton Rouge Parish Government (the "Parish") and West Baton Rouge Fire District No. 1 (the "Fire District", and together with the Parish, the "Petitioners") sued Summers, seeking a protective order and declarations related to their fee schedule and Summers' public records requests. Even so, the suit filed gave him an opportunity to dispute and ensure that his constitutional rights were protected, and so he sought *pro bono* counsel.

At trial on April 29, 2026, the Petitioners called Summers and Chance Stephens, West Baton Rouge Parish Director of Finance. Summers respectfully submits that the Judgment is clearly contrary to the law in a number of critical ways. The Judgment unconstitutionally enjoins Summers from making public records requests and, to boot, casts him in judgment for Petitioners' attorneys' fees and costs. This cannot be the law; exercising Louisiana's constitutional rights of access to public records should not place a citizen at risk of financial ruin, no matter how much the government may not care for him, or his work.

All of these circumstances warrant a new trial, and, after such a hearing, a new judgment.

THE JUDGMENT

Petitioners here sought a declaratory judgment regarding the charging of fees to Summers in connection with public records requests, including a declaration that their fee schedule for copies of public records was reasonable under the Louisiana Public Records Law, and a declaration that they were permitted to demand payment for certain costs associated with their compliance with public records requests. Petitioners also demanded that Summers pay their attorney's fees and costs in the action, but cited no authority supporting the assessment of such costs and fees against the requestor of public records. The Petition definitively did not seek injunctive relief.

The Judgment goes beyond the Petition, effectively enjoining Summers "from seeking additional public records" until he has "paid in full the outstanding balance due and owed Petitioner … for previous public records requests." *See* Exhibit 1. The Judgment also mandates that if Summers "desire[s] to review any records," he "shall upon the request of [the Parish]" provide an "advance deposit" for a number of potential "anticipated costs" disconnected from providing copies of records, notwithstanding that reviewing records is free in Louisiana. Finally, the Judgment also orders Summers to "reimburse" the Parish for "all reasonable fees and expenses, including reasonable attorney's fees in the prosecution of this action and all costs of these proceedings." Because the relief granted in the Judgment is clearly contrary to the law and evidence, and presents a serious miscarriage of justice, this Court should order a new trial.

LAW AND ARGUMENT

I. Motion For New Trial Standard

Under La. C.C.P. art. 1971, a party may move for, or a court may grant on its own, a new trial on all or any part of the issues. Peremptory grounds for granting a new trial are stated in La. C.C.P. art. 1972, including when the verdict or judgment "appears clearly contrary to the law and the evidence." Discretionary grounds for granting a new trial are found in La. C.C.P. art. 1973, allowing the court to grant a new trial if there is "good ground" to do so. When the Court is persuaded a miscarriage of justice occurred, a new trial should be granted. *Peters v. Hortman*, 2003-2597, p. 67 (La. App. 1 Cir. 10/29/2004), 897 So. 2d 131, 13536. Summers submits that is exactly what occurred here and suggests the peremptory and discretionary grounds are met. As such, this Court should grant a new trial.

II. The Judgment improperly enjoins Summers from exercising his constitutional and statutory rights of access to public records.

The ruling that Summers is "prevented from seeking additional public records" until he pays a purported "outstanding balance" effectively enjoins him from exercising his right to examine public records—a fundamental, constitutional right guaranteed in La. Const. art. XII, § 3 and La. R.S. § 44:1 *et. seq*. Given that Petitioners did not seek in pleadings or ask at trial for injunctive relief, the grant of such an onerous prohibitive injunction is clearly contrary to the law and evidence.

As an initial matter, Petitioners sought a declaratory judgment and a protective order[1] staying Petitioners' obligation and duty to respond to public records requests from Summers. There was no request for injunctive relief at all.

The Judgment prohibits Summers from even *seeking* public records—relief not even requested by Petitioners. The Judgment's injunction is so broad it would prevent the exercise of Summers' right to examine records, which is free. The imposition of costs is permitted for *copies* made—the physical paper—but examining records is statutorily free. *See* La. R.S. § 44:32(C)(3). There is no legal basis of which counsel is aware that would condition the exercise of the public's right to examine records on the payment of copying fees, whether newly imposed or "outstanding."

The Public Records Law allows custodians to "request payment of fees in advance of production." La. R.S. § 44:32(C)(1)(a). In addition, it provides that a custodian must provide copies of public records "unless the requestor fails to pay the applicable copying fees after being notified of the amount in advance of production or the requestor has an outstanding balance from a prior request." La. R.S. § 44:32(C)(1)(a). In other words, a public agency is authorized to *decline to provide copies* of requested records where the requestor refuses to pay copying fees or has an outstanding balance from records the requestor has previously received. But nothing in the Public Records Law (or any other law) authorizes a court to *enjoin a requestor* from "seeking … public records" for any reason—let alone an allegation of unpaid copying fees, and especially when the requestor never even received those copies.

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[1] At the end of the hearing, Petitioners stipulated that they were no longer seeking a protective order nor declaratory judgments related to Summers' inspection of public records.

Further, the evidence presented does not support that Summers owed any "outstanding balance." The documents, communications, and testimony establish that Summers was told after the records had already been assembled—not "notified in advance" as required by law—that his March 2026 request for copies would cost $121.50. The Public Records Law allows for the Petitioners to collect reasonable fees "for making copies of public records." La. R.S. § 44:32(C)(1)(a). But while the custodian can request payment in advance, such payment can only be demanded when the requestor seeks copies of the records. Here, Summers elected not to receive any copies. For the Judgment to charge him for copies never collected creates a chilling effect in itself.

Indeed, the Judgment's treatment of these charges as an "outstanding balance" turns the purpose of this state's strong statutes and constitutional rights guaranteeing transparency and accountability on their head. A member of the public, without the knowledge of the inner workings of government, could ask for records, and in response be told he or she owes thousands of dollars despite never agreeing to such a charge or receiving the records. The Judgment herein effectively sends a requestor to debtor's prison without his ever having had an opportunity to narrow any copy request or decide to review the documents for free. A requestor merely making the wrong (or too broad) a request—based on a law that is designed to allow all citizens to freely observe the operations of government—cannot then obligate a person to pay the government. Fee schedules vary, and unexpected (and potentially exorbitant) copy fees could deprive any person of their funds and their right of access just for exercising their right to seek public records.

III. An award of attorneys' fees to the government in a public records case is baseless and unprecedented.

The following cannot be said clearly enough: **there is no authority allowing a custodian to recover attorneys' fees as a prevailing party in litigation against a requestor of public records**. The portion of the Judgment casting Summers with the Petitioners' attorneys' fees and costs is shocking, unprecedented, and warrants a new trial.

It is a bedrock principle in the American legal system that a litigant bears his own attorneys' fees unless a contract or statute specifically provides otherwise. *See Kaltenbaugh v. Bd. Of Supervisors, S. Univ. & Agric. & Mech. Coll. at Baton Rouge*, 2022-0092 (La. App. 4 Cir.

8/24/2022), 346 So. 3d 823, 838 (quoting *Baker Botts LLP v. ASARCO LLC*, 576 U.S. 121, 126 (2015)). The Public Records Law allows *requestors* that prevail to recover costs and fees. *See* La. R.S. § 44:35(D)(1) (allowing fee recovery by a prevailing "person seeking the right to inspect, copy, or reproduce a record" in litigation); La. R.S. § 44:35(D)(2) ("If a public body or official brings a suit against a person based on the person's request … and the person prevails in the suit, *the person* shall be awarded reasonable attorney fees and other costs of litigation.") (emphasis added).

A 2018 amendment to the Public Records Law enforcement statute specifically addresses cases like this—where the government preemptively sues a requestor during a public records dispute—and provides that *requestors* shall recover attorneys' fees and costs if they prevail, but the law excludes the government from such an award. Without any contract, statute, or even equity supporting the Judgment's award of attorneys' fees and costs, a new trial should be granted.

IV. The Judgment requiring Summers to pay an advance deposit for certain "anticipated costs" of future requests is contrary to the Public Records Law.

The Judgment also seeks to require Summers to "provide an advance deposit to compensate Petitioner" for certain "anticipated costs" arising out of future public records requests. The law allows custodians to "request payment of fees in advance of production," La. R.S. § 44:32(C)(1)(a), but only for copies that are requested and for which the custodian is allowed to charge.

On a fundamental level, the Judgment allows Petitioners to demand reimbursement for the obligations of all records custodians, who are already paid with tax dollars to collect, redact, and provide access to public records. As Courts in this state have long held:

> [C]ustodians of public records are already compensated for performing their duties, including the duty of responding to public records requests that ensure the public's constitutional right of access to such records.[2]

Further, as noted *supra,* "[n]o fee shall be charged to any person to examine or review any public records, except as provided in this Section, and no fee shall be charged for examination or review to determine if a record is subject to disclosure, except as may be determined by a court of

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[2] *Par. of Ascension v. Wesley*, 2019-0364 (La. App. 1 Cir. 12/12/2019), 291 So. 3d 730, 733; *see also St. Tammany Par. Coroner v. Doe*, 2010-0946, p. 7 (La. App. 1 Cir. 10/29/2010), 48 So. 3d 1241, 1247 (requestor not required to pay for redaction of privileged information); Def.'s Opp'n, p. 11–17.

competent jurisdiction." La. R.S. § 44:32(C)(3). Rarely is such a situation found, as custodians must show truly extraordinary circumstances to justify such fees. *See Wesley*, 291 So. 3d at 734 (reversing order requiring citizen to pay parish for the review and redaction of requested records); *see also All. for Affordable Energy v. Frick*, 96-1763, p. 17–18 (La. App. 4 Cir. 5/28/1997), 695 So. 2d 1126, 1136 (quoting 1980-81 La. Op. Att'y Gen. 181, No. 81-615 (1981)) ("an order by the custodian requiring after hour examination is subject to strict scrutiny and will be allowed when the request is of such a magnitude that it disrupts normal office procedure to the point where the office ceases to operate[.]").

Despite these principles, the Judgment allows Petitioners to require an advance deposit to cover "[c]ompensation to any employees who may be required to in order to gather and prepare the requested documents…" and "reimbursement of all expenses incurred by Petitioners to segregate, review and/or redact documents …," and it seems to presume that preparing public records for production in digital form will necessitate the rarely invoked "overtime time" that could be charged. While the latter situation could in theory occur, predetermining that an agency will need such extraordinary compensation for requests which have not yet been made is contrary to the law and unsupported by any evidence at trial. A new trial should be granted.

V. The Findings of Fact and Conclusions of Law evidence the need for a new trial.

At the outset, it must be noted that rather than exercise the recently amended statutory ability to narrow an outstanding request, Petitioners rushed into Court to file suit against a citizen for requesting public records. In 2024, the Legislature amended La. R.S. § 44:32 to provide, at (A)(2):

> If the custodian reasonably determines that the request would substantially disrupt required government operations, the custodian may deny access only after reasonable attempts to narrow or specify the request with the requestor.

The evidence shows Petitioners never asked Summers to narrow or better specify his needs.

The Judgment also included three specific findings of fact and conclusions of law that are all, it is respectfully suggested, clearly contrary to the law and evidence:

- Petitioners did not present any evidence to satisfy their burden of proof on the question of whether the fee schedule was "reasonable." The Court's finding of reasonableness is unsupported, as the determination is to be made on a case-by-case basis. *Granger v.*

Litchfield, 94-0114, p. 4 (La. App. 1 Cir. 11/10/1994), 645 So. 2d 1262, 1265 *rev'd in part*, 94-3107 (La. 2/3/1995), 649 So. 2d 397.

- While the "good faith" of a custodian is not a part of any determination as to whether records are to be produced (*see e.g.*, *Ferguson v. Stephens*, 623 So. 2d 711 (La. App. 4 Cir. 1993)), Petitioners' contemporaneous communications suggested a recognition of Summers' right to inspect records rather than receive copies and an effort to arrange a time for that inspection—while at the very same time preparing and filling this extraordinary lawsuit.
- The conclusion that Summers' "failure to pay" an outstanding balance was "unreasonable and not in good faith" makes conclusions based on Summers' state of mind without evidence. It flies in the face of Summers' testimony that he did not believe he had any outstanding balance and that he was attempting in earnest to exercise his right to inspect the records when Petitioners filed this lawsuit and cut off all discussion.

VI. The Court should exercise its discretion to grant a new trial.

There exist several good grounds for a new trial. La. C.C.P. art. 1973. Specifically, justice requires a new trial here because Summers has been denied his constitutional right—potentially forever—to examine public records. *See generally* Affidavit of John Summers, attached hereto as Exhibit 2. In this way, the Judgment imposes a serious chilling effect on inspection, review, and discussion (including reporting) on the workings government. The Judgment's tacit effect: a government can run up copy charges without regard to the requestor's ability (or willingness) to pay and use the fee as an "outstanding balance" even if the records are never copied or received. The Judgment compounds this issue by casting a requestor in judgment for his government's decision to file suit against him. The chilling effect of this Judgment was surely not the Court's intention, but it is apparent. *See Par. of Ascension v. Wesley*, 2019-0364, p. 11 (La. App. 1 Cir. 12/12/2019), 291 So. 3d 730, 736 ("The chilling effect of the fear of a requestor being named as a defendant and being forced to defend against a lawsuit with no prior communication from the custodian of public records as to the breadth of the records responsive to the request, an estimate of the length of time necessary to fulfill the request, or the possibility of the governmental entity seeking reimbursement of costs for review of the records simply cannot be denied.").

In the end, all of these results are in direct contrast to the clear language of the Public Records Law and the constitutional right of access, which "must be construed liberally in favor of free and unrestricted access to the records." *In re Matter Under Investigation*, 2007-1853, p. 24–25 (La. 7/1/2009), 15 So. 3d 972, 989, quoting *Cap. City Press v. E. Baton Rouge Par. Metro. Council*, 96-1979, p. 4 (La. 7/1/1997), 696 So. 2d 562, 564 (further quotations omitted).

CONCLUSION

For all of the reasons discussed above, pursuant to La. C.C.P. arts. 1972 and 1973, Defendant respectfully requests that the Court order a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing pleading to all parties via their e-mail address designated for service or located on pleadings in this matter on June 1, 2026.

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