SUPREME COURT OF LOUISIANA

No.: 2026-C-01200

JOSHUA B. ARCHOTE

Plaintiff-Respondent

vs.

WILLIAM F. TATE, IV, in his capacity as president and custodian of records for LOUISIANA STATE UNIVERSITY AGRICULTURAL AND MECHANICAL COLLEGE

Defendant-Applicant

OPPOSITION TO
APPLICATION FOR WRIT OF REVIEW ON BEHALF OF WILLIAM F. TATE, IV in his capacity as president and custodian of records for LOUISIANA STATE UNIVERSITY AGRICULTURAL AND MECHANICAL COLLEGE

which asks this Court to review the decision of the First Circuit Court of Appeal in appeal no. 2025-CA-0542 from the judgment of the 19th Judicial District Court, East Baton Rouge, Section 23, Judge Kelly Balfour, in civil proceeding no. C727489

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INTRODUCTION

Joshua B. Archote is a reporter and the former editor-in-chief of The Reveille, the student newspaper at the Louisiana State University Agriculture & Mechanical College (hereinafter the "University"). In September 2022, Mr. Archote made a public records request to the University for a copy of records of an investigation into the University's former Assistant Director of Greek Life, Donald Abels. The University denied Mr. Archote's request with no explanation other than a citation to a trial court decision from March 2022, *McMakin v. LSU*, Docket No. 709, 240 Div. 29, 19th Judicial District Court, which related to similar records.

On January 9, 2023, Mr. Archote sued the University for violating the Louisiana Public Records Law. The University filed an exception of *res judicata* based on the *McMakin* decision, which the trial court granted and dismissed Mr. Archote's petition.

Mr. Archote appealed, and the First Circuit Court of Appeal reversed the finding of *res judicata* and remanded the case for a full trial on the merits. After the submission of evidence and testimony from Mr. Archote and a University official, the trial court denied Mr. Archote's request for mandamus, finding that the constitutional privacy interest outweighed the public interest in the particular public records request.

Mr. Archote appealed, and the First Circuit reversed, reasoning that Mr. Abels did not have a reasonable expectation of privacy in the records requested. The University filed the underlying application for a writ of certiorari, which asks this Court to review the First Circuit's decision.

This Court should deny the University's writ application. The University alleges errors but fails to identify any special considerations warranting this Court's review. Moreover, the First Circuit's decision contains no errors. The First Circuit's decision follows settled jurisprudence, and there is no reason to reconsider the judgment.

RESPONSE TO THE UNIVERSITY'S STATEMENTS OF CONSIDERATIONS

The First Circuit's decision does not warrant this Court's review. None of the special considerations stated in Louisiana Supreme Court Rule X § 1 is present.

The decision does not create a circuit conflict. The First Circuit's ruling in this case is in line with this Court's and other circuit's decisions on public records cases. R. X § 1(a)(1). The University's argument that the decision conflicts with other decisions mischaracterizes Mr.

Archote's records request and case law. Specifically, the University contends that Mr. Archote requested an employee performance evaluation. But this is not true; Mr. Archote asked for records of an investigation into Mr. Abels by the University. None of the cases that the University cites for allegedly creating a circuit split involved requests for investigations records. *Cf. E. Bank Consol. Special Serv. Fire Prot. Dist. v. Crossen*, 04-838, p. 3 (La. App. 5 Cir. 12/28/04), 892 So. 2d 666, 668 (finding assistant fire chief had a reasonable expectation of privacy in entire personnel file sought by employee challenging disciplinary action); *Trahan v. Larivee*, 365 So. 2d 294 (La. App. 3 Cir. 1978) (finding performance evaluation private).

In addition, the decision does not decide any significant issue of law which has not been, but should be, resolved by this Court. R. X § 1(a)(2). This Court has addressed balancing the constitutional rights of access and privacy. *See Shane v. Par. of Jefferson*, 2014-2225, pp. 18–22 (La. 12/8/15), 209 So. 3d 726, 741–742. The University does not identify any unresolved issue but suggests that access to performance evaluations and personnel files will upend the University's ability to hire and retain employees. This argument is wholly unsupported and distorts the records request in this case.

Finally, the decision does not erroneously interpret or apply any law, with the effect that the decision will cause material injustice. R. X § 1(a)(4). The First Circuit correctly applied the Public Records Law and the constitutional rights of access and privacy when evaluating whether the University met its burden to justify withholding the requested investigation records. Appl. at 39–43. The First Circuit correctly interpreted this Court's jurisprudence and the Public Records Law when it ruled that the existence of a particular University policy did not in itself prove that all records—particularly investigations—and documents within a public employee's file are objectively and subjectively private, and are therefore per se not subject to disclosure under the Public Records Law. Appl. at 41, 43.

STATEMENT OF THE CASE

The First Circuit's opinion summarizes the underlying facts. Appl. at 31–35.

While a reporter at The Reveille, Mr. Archote sought to write an article about Mr. Abels, the University's former Assistant Director of Greek Life, whom the University Police investigated regarding a computer "catfishing" complaint. Appl. at 31, 34. The University Police ultimately

referred the matter for investigation to the University. R. at 304:16–20. On September 29, 2022, Mr. Archote made a public-records request to the University for "[r]ecords relating to an internal investigation of former LSU assistant director of Greek Life, Donald Abels, that took place within the Interfraternity Council or any other LSU offices." R. at 214; 312:12–14.

Two hours later, the University responded and denied Mr. Archote's request, stating that the records "are not subject to public record [sic]. The court ruled on this matter on March 8, 2022 in the case of McMakin v. LSU[.]" R. at 78, 214.

I. Prior Proceedings—Exception of *Res Judicata*

Mr. Archote filed a petition for writ of mandamus pursuant to the Louisiana Public Records Law, directing the University to make the records available. The University filed an exception of *res judicata*, arguing that another records requester, Dixon McMakin, had represented Mr. Archote's interests in his own records lawsuit and, therefore, Mr. McMakin and Mr. Archote were the same parties. R. at 20–21. The trial court granted the exception and dismissed Mr. Archote's petition. R. at 39.

Mr. Archote appealed, and the First Circuit reversed the trial court's decision, finding that Mr. McMakin and Mr. Archote filed suit to enforce their *individual* rights under the Louisiana Constitution and Public Records Law to examine certain public records. *See Archote v. Tate*, 2023-0982, p. 17–18 (La. App. 1 Cir. 6/3/24), 392 So. 3d 393, 406. As such, Mr. McMakin could not adequately represent Mr. Archote's future interests in enforcing his individualized right to access public records. *Id*.

II. Prior Proceedings—Hearing on Petition for Writ of Mandamus

At the subsequent trial on the merits, Mr. Archote testified to the date and contents of his public records request and the University's response. R. at 322:6–13; 323–324. In addition, he testified that various news outlets had written articles on the Police and University investigation, including BR Proud, The Advocate, and The Sewanee Purple, the student paper at Sewanee: The University of the South, where Mr. Abels was hired after leaving the University. R. at 348:3–7; 304:21–24; 305:10–18. Mr. Archote testified that he had read in The Sewanee Purple's article that Mr. Abels had forwarded an email between himself and a University Human Resources employee about the investigation. R. at 304:21–24; 305:10–18. Further, Mr. Archote testified that he wrote

two articles about Mr. Abels, the second of which was written after receiving information from a source who worked with Mr. Abels at the University. R. at 343:16–23.

Mr. Archote called University Detective John Millet, who investigated Abels, as a witness, and the detective testified about the facts of his investigation. R. at 358:4–13. He also testified that he was interviewed by reporters about the investigation, including the Sewanee Purple reporter. R. at 358–359.

The University called as a witness Johanna Posada, the University's assistant general counsel who responded to Mr. Archote's request. R. at 361–362. She testified that when she received Mr. Archote's request, she contacted Human Resources to confirm if there were any new records to produce. R. at 371:1–4. She also testified that because Mr. Abels was not a high-ranking official, his investigative file did not need to be public. R. at 374:18.

Ms. Posada further confirmed that the public has an interest in knowing whether the University enforces its own personnel policies because its employees are public employees. R. at 383:24–384:4.

The University did not call Mr. Abels as a witness or offer any evidence of his subjective expectation of privacy in the investigation. Rather, the University merely submitted its Policy 40,[1] which sets forth the University's definition of "personnel records."

III. Prior proceedings—First Circuit

Mr. Archote appealed the trial court's judgment, and the First Circuit again reversed the trial court. The First Circuit correctly applied *de novo* review, explaining that while a trial court's

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[1] The University's Policy 40 defines "personnel record" as "any record maintained in any administrative office of the University in connection with the recruitment and employment of any person" and includes:

> [L]etters of application, personal resumes, letters of recommendation, academic records, materials furnished by a placement service, appointment forms, records of promotion or other changes in status subsequent to appointment, salary raises, leave accrual, use and balances and any other personnel actions processed through the Office of Human Resources Management, performance evaluations, and correspondence in the employee's personnel folder between the individual employee and any administrative officer of the University.

R. at 226. Policy 40 provides that "All persons having access to the personnel files will regard the contents (other than directory information) as confidential and will not divulge such contents." R. at 228.

judgment on a writ of mandamus is typically reviewed under an abuse of discretion standard, questions of law, including the proper interpretation of a statute, are reviewed *de novo*. The First Circuit explained that "[w]hen a request for public records is at issue, the custodian or the individual claiming the privacy right must prove that there is a reasonable expectation of privacy against disclosure of the information." Appl. at 40.

Based on relevant jurisprudence, the testimony at the hearing, and the University's Policy 40, the First Circuit determined that the University failed to prove that Mr. Abels had a reasonable expectation of privacy in the information regarding the internal investigation. Appl. at 41. Further, the First Circuit reasoned that Policy 40 did not establish that University employees have a reasonable expectation of privacy as to every document in their personnel file and warned that, under the University's position, "a public body could shield any public document regarding an employee from public disclosure by merely filing it away in his personnel file." *Id*. The First Circuit noted that certain private information of Mr. Abels may need to be redacted before the release of the investigation records.

RESPONSE TO THE UNIVERSITY'S ASSIGNMENTS OF ERROR AND SUMMARY OF ARGUMENT

1. The First Circuit correctly found that the University failed to meet its burden in proving that Mr. Abels had a reasonable expectation of privacy in the requested records.

2. The First Circuit correctly found that the records related to an investigation into alleged misconduct by Mr. Abels are subject to the Public Records Law.

3. The First Circuit correctly found that Mr. Abels did not have a reasonable expectation of the privacy in the records related to an investigation into any alleged misconduct by him, and any purported privacy interest did not outweigh Mr. Archote's constitutional right to access the records.

4. The First Circuit correctly applied *de novo* review to questions of law only, including the interpretation of the Public Records Law and right to privacy.

ARGUMENT

I. The First Circuit correctly found that the University failed to meet its burden to prove that Mr. Abels had a reasonable expectation of privacy in the requested records.

The University's first three assignments of error all mischaracterize Mr. Archote's request as one seeking Mr. Abels's performance evaluation. This is wrong and misleading. Mr. Archote

requested a copy of "records related to an internal investigation" of Mr. Abels. Appl. at 31. The First Circuit correctly applied case law in reviewing whether the University met its burden in proving that Mr. Abels had a right to privacy in that investigation.

A. The First Circuit correctly required the University, as the records custodian, to establish that Mr. Abels had a reasonable expectation of privacy in the records.

The Louisiana Constitution provides that "[n]o person shall be denied the right to . . . examine public documents, except in cases established by law." La. Const. art. XII, § 3. This Court has consistently required a broad reading of the constitutional right of access. *See Shane,* 209 So. 3d at 735; *People for the Ethical Treatment of Animals v. Bd. of Supervisors of La. State Univ.*, 2023-01396, p. 7 (La. 6/28/24), 387 So. 3d 527, 533. To that end, any "exception, exemption, and limitation to the laws pertaining to public records not provided for in the Public Records Law or in the Constitution of Louisiana has no effect." *Shane*, 209 So. 3d at 735. Exceptions must be "narrowly construed, with any doubt resolved in favor of the public's right of access." *Talley v. La. Dep't of Transp. & Dev.*, 2022-0983, p. 10 (La. App. 1 Cir. 2/24/23), 361 So. 3d 1041, 1049.

A custodian has the burden of proving that a public record is not subject to access. La. R.S. 44:31(B)(3). Jurisprudence is clear that when a records custodian asserts an individual's constitutional right of privacy, a court must determine whether the individual has an actual or subjective expectation of privacy and also whether that expectation is a type which society at large is prepared to recognize as reasonable. *Shane*, 209 So. 3d at 741. "**If, and only if**, a reasonable expectation of privacy is found, the court must weigh or balance the public records disclosure interest against the privacy interest." *Angelo Iafrate Constr. L.L.C.*, 2003-0892, p. 6 (La. App. 1 Cir. 5/4/04), 879 So. 2d 250, 255 (emphasis added). The balancing of these competing interests is done on a case-by-case basis given the particular facts and circumstances. *Cap. City Press, L.L.C. v. La. Univ. Sys. Bd. of Supervisors*, 2013-2001, 2013-2000, p. 12 (La. App. 1 Cir. 12/30/14), 168 So. 3d 727, 737. The First Circuit correctly ruled that the University failed to prove that Mr. Abels had a reasonable expectation of privacy in the records of an investigation into allegations of misconduct by a public employee.

B. No circuit split exists.

The First Circuit correctly distinguished cases involving access to routine evaluations and personnel files, and the underlying decision does not create a circuit split. The University relies on *E. Bank Consol. Special Serv. Fire Prot. Dist. v. Crossen* and *Trahan v. Larivee* to claim a conflict exists, but these cases are inapposite. In *Crossen*, an employee was challenging a disciplinary action against him, and during discovery in that litigation, sought his supervisor's entire personnel file. *Crossen*, 892 So. 2d at 668. Only once that discovery request was denied did the employee seek the same documents—his supervisor's entire personnel file—through a public records request. *Id*. The supervisor whose personnel file was requested brought the action himself to prevent disclosure of these records, asserting his own right to privacy. *Id*. The requestor filed a reconventional demand seeking a writ of mandamus, and the district court conducted an *in camera* inspection of the entire file before determining that the assistant fire chief had a subjective and objective reasonable expectation of privacy in the entire file. *Id*. Moreover, the court did not hold broadly that personnel records are exempt from disclosure; it held that Mr. Crossen's personnel records were exempt. *Id*. at 670.

Similarly, in *Trahan v. Larivee*, a requester sought evaluation reports of specific city employees. 365 So. 2d at 295. The requestor attempted to obtain consent from the employees to review the reports; all but one of the employees refused to consent to the requestor's inspection. *Id*. at 296. The Third Circuit Court of Appeal noted that personnel evaluation reports are among the records the Public Records Law explicitly exempts from disclosure. *Id* at 298. But, based on a review of a blank evaluation report, the court explained that evaluation reports are based on personal opinions given confidentiality and candidly about the employee, which weighed against disclosure of those particular reports. *Id*. at 300.

Unlike the requests in *Crossen* and *Trahan*, Mr. Archote did not seek a routine performance evaluation or Mr. Abels' entire personnel file. He requested only records related to an investigation by the University into alleged misconduct. The University has not identified a single case in which a court found an investigation of a public employee is private and not subject to the Public Records

Law.[2] An investigation of alleged misconduct by a public employee is not the type of record the Legislature has recognized as private, and there is no objective expectation of privacy in it.

Moreover, unlike the defendant in *Crossen*, Mr. Abels was not a party and has never asserted his own privacy interest. The record is devoid of any evidence that Mr. Abels has or even wishes to assert a subjective expectation of privacy in the records. The University's argument that the First Circuit's decision cannot be reconciled with other cases lacks merit.

Although the University baldly asserts that the Second and Fourth Circuit Courts of Appeal have also issued "conflicting decisions," Appl. at 6, it does not explain how the cited appellate cases allegedly conflict. And, in fact, they do not. In *Loc. 100, Serv. Emps., Int'l Union v. Smith*, an employee union's request for the addresses, phone numbers, and organizational affiliations of support employees was at issue. 36,454, p. 1 (La. App. 2 Cir. 10/23/02), 830 So. 2d 417, 418. The Second Circuit conducted a balancing test and found privacy expectations outweighed the public's need to access that information. *Id*. at 421. The court did not hold that personnel files—let alone the records of an investigation into alleged misconduct—are exempt from disclosure.

Finally, the University relies on a case involving a specific statutory exemption for the personnel records of public-school employees to bolster its manufactured "circuit split" claim. *See* Appl. at 18–19 (citing *Lawrason v. St. Bernard Par. Pub. Sch. Dist*., 2022-0319 (La. App. 4 Cir. 11/9/22), 351 So. 3d 814). In that case, the plaintiff himself sought documents in his personnel file that were specifically deemed not matters of public record. *Id*. at 823. That narrow exception for public-school employees was created by the Legislature, unlike the University's policy, which unlike a statute cannot create an exception to the Public Records Law (*see* § I(C) *infra*). The University asks rhetorically whether "a public-school employee ha[s] a greater right to privacy than another public employee in performance evaluations and their personnel records." Setting

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[2] The University's argument that additional guidance from this Court is necessary for records custodians to properly respond to public records requests and to balance the right to privacy against the right of access lacks merit. Jurisprudence makes clear that investigations are not private, and there is no need for a records custodian to balance interests when responding to a request for an investigation. *See City of Baton Rouge/Par. of E. Baton Rouge v. Cap. City Press, L.L.C.*, 2007-1088 (La. App. 1 Cir. 10/10/08), 4 So. 3d 807; *Hilburn v. State ex rel. Div. of Admin.*, 98-1993, p. 4 (La. App. 1 Cir. 11/5/99), 745 So. 2d 1189, 1191 ("there is no need to balance conflicting constitutional rights, because there is no right to privacy in [an investigation]"). An opinion from this Court providing guidance to records custodians would be based on completely hypothetical situations, not facts in the record considered by the courts below.

aside the fact that, as discussed above, this case involves the records of an investigation of alleged misconduct, not garden-variety performance evaluations or personnel files, the answer to the University's question is "yes, if that's what the Legislature has decided." Likewise, the University asks whether "a specific statute conveyed greater privacy protection to certain public employees than what is already conveyed by the Louisiana Constitution." And the answer again is that the Legislature absolutely *can* enact a statute that provides greater protection than the minimum rights guaranteed by the Constitution. The fact that the Legislature has decided to exempt records related to particular categories of public employees does not create a judicial "circuit split" for this Court to resolve.

Finally, without any citation, the University argues that disclosure of performance evaluations will make it impossible to attract and retain qualified individuals. This unsupported concern again misstates the records request at issue and provides no justification for revisiting the First Circuit's decision.

C. Policy 40 cannot create a reasonable expectation of privacy.

The First Circuit correctly ruled that the University's Policy 40 does not establish a right to privacy in investigation records. The University argues that through its policies, Mr. Abels has a justified and reasonable expectation that his entire personnel file described in Policy Statement 40 will be protected from disclosure. Appl. at 11. This argument is wrong, and the First Circuit correctly rejected it.

This Court has made clear that any exception, exemption, or limitation to public records not provided for in the Public Records Law or in the Constitution has **no effect**. *People for the Ethical Treatment of Animals*, 387 So. 3d at 533. The Legislature—not individual public bodies—creates exemptions to the Public Records Law. The University's Policy 40 acts as an extra-statutory exception to the Public Records Law. As the First Circuit cautioned, the University's argument enables a public body to "shield any public document regarding an employee from public disclosure by merely filing it away in his personnel file." Appl. at 41. This is untenable under the Public Records Law. And, contrary to the University's claims that this decision will degrade the privacy rights of its employees, this decision simply means the University cannot rely on Policy 40 to withhold otherwise public records it places within an employee's personnel file without a

showing that an employee has an actual and reasonable expectation of privacy in the records. The First Circuit did not err in ruling that the introduction of Policy 40 did not create a reasonable expectation of privacy in Mr. Abels's investigation records.

D. The First Circuit correctly considered the evidence in deciding whether the University met its burden.

The University argues that the trial court kept speculative allegations against Mr. Abels out of evidence, which the First Circuit "skipped past" and considered "an unsubstantiated story, and relied on allegations of purported misconduct in to [*sic*] diminish Mr. Abels' privacy interest." Appl. at 16. This argument is wrong, and the First Circuit did not err.

The First Circuit considered the testimony of Mr. Archote, Ms. Posada, and the police report detailing the investigation of Mr. Abels, which referred the matter to the University for further investigation, and which was admitted without objection. *See* Appl. at 34. The University—without any citation—contends that the First Circuit failed to distinguish between alleged and substantial misconduct.[3] This argument is beside the point. As explained *supra*, the University had the burden of proving the investigative records were exempt and to prove Mr. Abels had a reasonable expectation of privacy in the records. The Court had no need to consider the weight of the claims against Mr. Abels—which were detailed in the police report and did not come from "unsubstantiated" sources beyond the record. The University's argument that the First Circuit considered evidence that was excluded or considered unsubstantiated claims of misconduct is baseless; the First Circuit's decision as to whether Mr. Abels had a reasonable expectation of privacy in the requested records was based on evidence in the record and considered by the trial court.

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[3] To the extent that the University relies on *McCarter* for its argument that there is a difference between alleged and confessed misconduct, this argument is misplaced. In *McCarter v. Louisiana Department of Children & Family Services*, the plaintiff sued her former employer, Department of Children and Family Services ("DCFS") for invasion of privacy based on DCFS providing results of its investigation into the plaintiff, which was conducted during her employment, to another agency that subsequently hired the plaintiff. 2022-1121, p.12 (La. App. 1 Cir. 4/14/23) 366 So. 3d 606, 614. The fact that she signed a statement acknowledging her actions was not dispositive. Nor were the plaintiff's arguments that the investigation was incomplete and no disciplinary actions were taken. The court found that the plaintiff had no reasonable expectation of privacy in records pertaining to the investigation. *Id*. Moreover, the court explicitly acknowledged the investigation into her "alleged" misconduct. *Id*. at 615. This case does not mean that only investigations conducted pursuant to confessed misconduct are public.

The University complains that this decision will allow unsubstantiated or fabricated claims to diminish public employees' privacy rights, but this issue was not before the courts below and does not warrant further review from this Court. This argument misstates the record and the First Circuit's decision, which specifically ruled that the University failed to meet its burden in proving the employee subjectively had an expectation of privacy in the records related to the investigation, and that the expectation was objectively reasonable.[4]

E. The First Circuit correctly applied *de novo* review to questions of law, including the interpretation of the Public Records Law and right to privacy.

Although the University admits that the First Circuit stated the correct standards of review, it claims without basis that the appellate court failed to apply those standards and applied "only" a *de novo* standard. Appl. at 16. That is demonstrably false. First, as previously noted, the court properly considered the evidence to determine whether the University met its burden. *See* § I(D) *supra*. The court's opinion states:

> After reviewing related jurisprudence, the testimony provided at the hearing, and LSU's Policy Statement 40, we have determined that the Records Custodian failed to prove Mr. Abels had a reasonable expectation of privacy in the information regarding the internal investigation of his alleged catfishing of LSU fraternity members.

Appl. at 41. The University complains that the opinion "does not state" that the trial court erred, Appl. at 21–22, but the court was not required to explicitly invoke the phrase "manifest error." The opinion deemed clearly erroneous the trial court's findings of fact regarding Johanna Posada's testimony and Policy 40. *See* Appl. at 41 (explaining that Policy 40's introduction "does not prove that an LSU employee had a reasonable expectation of privacy[.]"). Implicit in this reasoning is the obvious consideration that Mr. Abels *did not testify*, and the University offered no evidence of his subjective expectation of privacy. The trial court therefore lacked a reasonable evidentiary basis for finding that the University met its burden of proof. The University's

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[4] The University's hypothetical concerns lack logic. If allegations against an employee are indeed fabricated, an investigation into such allegations would reveal the truth and clear the employee. In addition, an employee subject to false accusations of wrongdoing may be able to assert their own subjective and objective expectation of privacy in the investigation of such allegations. But there is nothing in the record to support the University's arguments that the allegations into Mr. Abels were fabricated. This argument should be rejected.

disagreement with the court's decision does not mean that the First Circuit applied an inappropriate standard of review.

Moreover, the determination of whether a records custodian has met its burden of proof is a mixed question of law and fact, including the doctrinal components of what the Public Records Law requires as well as the fact-finding component of what the custodian proved. The First Circuit properly noted that jurisprudence establishes a public employee has no reasonable expectation in investigative information related to allegations of work-related misconduct. Appl. at 42 (citing *McCarter*, 366 So. 3d at 613; *Dauthier v. City of Baton Rouge*, 2021-1455, p. 2 (La. App. 1 Cir. 6/14/22), 2022 WL 2128421 at *4 (unpublished); *Par. of E. Baton Rouge*, 4 So.3d 807). Thus, the First Circuit appropriately applied the *de novo* standard to the legal questions, including the Public Records Law and the constitutional right to privacy.

The University criticizes the First Circuit's language as "slanted," suggesting its opinion indicates an "unjustified negative view of the allegations against Mr. Abels," which it alleges "distorted its legal analysis." Appl. at 23. This is deliberate distortion. First, the court appropriately considered the allegations against Mr. Abels unproven, and nothing in its opinion suggests otherwise. *See* § I(D) *supra.* The court's opinion explicitly refers to the University's investigation of Mr. Abels's "*alleged* catfishing." Appl. at 41 (emphasis added).

Likewise, the First Circuit correctly reasoned that, if a mere policy could deem personnel files confidential, "a public body could shield any public document . . . from disclosure," *Id*. The University disclaims this reasoning as a "negative inference" that the University was "shielding" documents, but it protests too much. The court's language was clearly conditional and not applied to the University's actions in this case ("*if* such *were* the case, a public body *could* . . . ") (emphasis added). *Id*. The University's defensive, cathected reading of non-existent subtext in the court's opinion does not reveal an inappropriate standard of review, much less a biased interpretation of the record. The appellate court did not substitute its own view of the facts; it correctly interpreted the law.

F. The University's "paradox" is a fallacy.

In an attempt to create false urgency, the University portrays the obligations of public-employer records custodians as "paradox[ical]." Appl. at 24–25. Not only is this claim erroneous, it once again miscasts the requested records at issue as personnel records containing private information. Mr. Archote did not request a personnel file or private information: He made a public records request to the University for "[r]ecords relating to an internal investigation" of misconduct allegations involving Mr. Abels. R. at 214; 312:12–14. As the First Circuit correctly held, public employees do not have a reasonable expectation of privacy in investigative information related to allegations of work-related misconduct. Appl. at 42 (citations omitted).

The obligations of records custodians are not a "paradox." The University misleadingly frames the custodian's job as a dilemma between liability for releasing records that violate an employee's privacy rights and liability for wrongfully withholding records. First, it is incorrect to suggest that custodians face "significant monetary consequences" for withholding or releasing records. Appl. at 24. The University cites no case in which a records custodian faced "monetary consequences" for improperly releasing private information. The current Public Records Law does not impute any personal liability to records custodians. *See* La. R.S. 44:35(E)(2).[5] If anything, this lack of *personal* liability unfortunately provides custodians an incentive to improperly withhold records, not an incentive to release private information.

The University asserts records custodians have no "reliable standard by which to address these competing interests" of privacy and disclosure. Appl. at 24. This is also incorrect, as the Public Records Law, jurisprudence, and common sense provide ample criteria to evaluate any records request. Employees themselves can object to the release of documents they believe are private, and public bodies frequently consult with counsel to help determine whether asserted privacy interests are legitimate and objectively reasonable. To the extent custodians lack clarity about legal protections for job-performance evaluations or personnel files generally, that is neither at issue in this case nor before this Court. As the First Circuit properly held, the University should

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[5] "No person shall be personally liable for any penalty provided in this Chapter, including damages, civil penalties, attorney fees, and other costs of litigation assessed for failure to comply with this Section." *Id.*

have released records relating to an investigation of misconduct allegations for which Mr. Abels—a public employee occupying a position of public trust—never asserted an expectation of or right to privacy.

CONCLUSION

For the reasons cited above, this Court should deny the University's writ application. The First Circuit did not err and there are no special considerations supporting this Court's review.

DATED: October 23, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I verify that all the allegations contained herein are true and accurate, and I further certify that a copy of this Opposition to William F. Tate's Writ Application has been served upon the following via electronic mail and/or mailed this 23rd day of October 2026:

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