

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA**

THOMAS RASK  
Plaintiff

UCN:  
Case No.

vs.

CITY OF ST. PETERSBURG,  
(a political subdivision of the State of Florida)  
Defendant

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**COMPLAINT FOR DECLARATORY RELIEF UNDER  
THE FLORIDA PUBLIC RECORDS LAW (§119, FLA. STAT.)**

Comes now Plaintiff, THOMAS RASK (henceforth "Plaintiff"), a resident, citizen and taxpayer in Pinellas County, Florida, and sues Defendant, THE CITY OF ST. PETERSBURG ("the City") in order to enforce his right to access public records, as guaranteed by Art. I, Sec. 24(a), Constitution of Florida, and by Sec. 119.07, Fla. Stat. Plaintiff seeks declaratory relief under Sec. 86.011, Fla. Stat., and a writ of mandamus pursuant to Fla. R. Civ. P. 1.630 for the purpose of enforcing said right of access to public records. Plaintiff alleges:

1. This court has jurisdiction pursuant to Art. V, Sec. 5, Constitution of Florida; Fla. R. Civ. P. 1.630; and Sec. 26.012, 86.011 and 119.11, Fla. Stat.
2. The City is an "agency" within the meaning of Sec. 119.011(2), Fla. Stat.
3. Venue is proper in Pinellas County pursuant to Sec. 47.011, Fla. Stat., because all of the parties are located in Pinellas County and because the cause of action accrued in Pinellas County.
4. The City issued a Request for Proposal ("the RFP") on August 26, 2022 for parties ("Proposers") to submit responsive bids. In the RFP, the City in the RFP that proposals should be marked "Proposal for the Historic Gas Plant Site" and delivered to the City on November 18, 2022. That deadline was later revised to 10:00 A.M. on December 2, 2022.

5. The City received four proposals in response to the RFP by said deadline.
6. The RFP required that that Proposers include "a twenty (20) year cash flow analysis" (henceforth "an Analysis"). That requirement can be found as the last bullet point in section 12 of the RFP with the headline "Part C - Financial Information" (attached as **Exhibit A**).
7. On December 26, 2023, Plaintiff made a public records request under §119 ("the §119 Request") for an Analysis submitted by the Proposer known as "50 PLUS 1 Sports" ("50PlusOneSports") and also for an Analysis submitted by the Proposer known as "Hines Rays" ("Hines/Rays"). The §119 Request is attached as **Exhibit B**.
8. In response to the §119 Request, the City provided incomplete records and included an email from Chief Assistant City Attorney Jeannine S. Williams, which stated in relevant part the following:

"Part of the City's determination of whether the analysis from 50 PLUS 1 Sports is exempt depends on whether or not the entity has continued to take measures to prevent the information from becoming available to persons other than those selected by the entity to have access. Since we have not heard back from this entity, we cannot yet make that determination.

You may release all other records responsive to the request (including this email) and claim the same exemption for the Hines/Rays analysis as the City did in the previous request."
9. However, the City's Clerk's office, the entity responding to the §119 Request, which is also the City's "custodian of public records" as that term is defined in Sec. 119.011(5), Fla. Stat., withheld records, but did not *itself* cite a statutory exemption in response to Plaintiff. Such citation is required by Sec. 119.07(1)(e), Fla. Stat., in order to withhold any public records. Put another way: to say we may "claim" an exemption is not the same as doing so.
10. Furthermore, section 22 of the RFP, attached as **Exhibit C**, states in relevant part the following:

If Proposer believes that its Proposal contains information that is a trade secret (as defined by Florida law) and/or information that is confidential and/or proprietary and therefore exempt from disclosure, then such information must be submitted in a separate electronic file and comply with the following requirements. In addition to submitting the information in a separate envelope, Proposer must include a general description of the information designated as a trade secret and/or confidential and/or proprietary and provide reference to the Florida statute or other law which exempts such designated information from disclosure in the event a public records request [sic].

11. Prior to the §119 Request, the city had not performed its own analysis leading to a determination as to whether any Proposer enjoyed exemption from disclosure of records in response to a public records request. The absence of such an analysis and determination ("a Determination") was confirmed by the City's response to a public records request Rask made on November 3, 2023.
12. In addition, item #3 in the §119 Request (again: dated 12/26/2023) asked for "Records showing your agency's (meaning: the City of St. Petersburg's) own legal analyses, determinations, discussions, memos etc. about whether any records submitted by the two aforementioned proposers are in fact exempt from disclosure under §119." In its response on January 5, 2024 the City provided no records of a Determination in response to said item #3, providing further confirmation that the City had not made a Determination of its own.
13. Thus the City's own response on 1/5/2024 to item #3 in the §119 Request shows that as of approximately the end of 2023, the City had not made any kind of determination (or not discussed it in writing internally) as to whether the records in dispute are in fact exempt from disclosure.
14. Prior to the §119 Request, Rask made repeated requests that the City make its own determination as to the exempt status of any records, and not rely on legal conclusions arrived at by any Proposer. Rask cited a certain Florida Attorney General Informal Opinion dated March 10, 2016 ("the AGO") which suggests that the city must make its own such determination.
15. In the AGO, the AG wrote that "if the material claimed by" a party, in that case called "Adventist," to be "'trade secret' does not appear to meet the statutory test or has not been protected as in Sepro, the school board should advise Adventist that it has received a public records request and will release the records and allow Adventist to seek a protective order for those materials." The city has not adhered to this process.
16. Intead, the City is using a process which delays the production of the requested public records. Such action is unlawful because it is not authorized by §119.

17. The city is also applying a different standard to the winning Proposer, Hines/Ray, than to a losing Proposer, 50PlusOneSports, in now finally making a Determination. As shown above, the City admits that it is now making a Determination when it writes about "the City's determination of whether the [twenty year cash flow] analysis from 50 PLUS 1 Sports is exempt." Yet it has not performed such a determination for Hines/Rays, as the response to the §119 Request shows.
18. Rather than receiving the public records requested, Plaintiff only received the "cover sheets" of the records. They are attached as **Exhibit D-1 (50PlusOneSports)** and **Exhibit D-2 (Hines/Rays)**.
19. The previously referenced Section 22 of the RFP is titled "INFORMATION DESIGNATED A TRADE SECRET AND/OR CONFIDENTIAL AND/OR PROPRIETARY" (henceforth "Section 22"). In Section 22 (see Exhibit C) the City specified what requirements a Proposer must meet in asserting that any part of their proposal is exempt from disclosure in response to a public records.
20. As stated in a fuller quote previously in this complaint, one requirement in Section 22 is:

Proposer must include a general description of the information designated as a trade secret and/or confidential and/or proprietary and provide reference to the Florida statute or other law which exempts such designated information from disclosure in the event a public records request. [sic]
21. Section 22 also states as follows:

Failure to comply with the requirements above shall be deemed as a waiver by Proposer to claim that any information in its Proposal is a trade secret and/or confidential and/or proprietary, regardless of whether such information is labeled trade secret and/or confidential and/or proprietary.

Thus the City specified that if *any* requirement in Section 22 is not met, then the public record asserted by a Proposer to be exempt from disclosure loses its exempt status.
22. In Exhibit D-1, with respect to any exemption, 50PlusOneSports states "Separate file pursuant to Florida Statute Section 812.081(1)(c)" without any further explanatory or elaborative text. This is the only text that could possibly exempt "such designated information from disclosure."

23. The statutory citation provided [Section 812.081(1)(c), Fla. Stat.] reads:

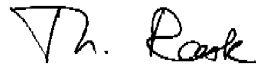
“Foreign instrumentality” means any agency, bureau, ministry, component, institution, association, or any legal, commercial, or business organization, corporation, firm, or entity that is substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign government.
24. Thus 50PlusOneSports has provided an inapplicable "reference to the Florida statute or other law which exempts such designated information from disclosure" (from Section 22).
25. Such action constitutes a "failure to comply with the requirements" also found in section 22.
26. Therefore, the Analysis provided by 50PlusOneSports to the City is not exempt from disclosure in response to a public records request. Yet the City continues to withhold it.
27. Even if 50PlusOneSports has cited Sec. 812.081, Fla. Stat., itself, rather than citing a subsection of a subsection, it would have failed to cite "Florida statute or other law which exempts such designated information from disclosure" because said section contains no exemption.
28. Turning now to Exhibit D-2, the Proposer Hines/Rays claims that the "RFP requires the submission of 20-year cash flow projections for this masterplan" [underlining added]. The underlined portion is factually inaccurate because the RFP requires no such thing. Instead, the RFP requires the submission of an Analysis for "the Property," the latter being a term which is defined in the RFP.
29. There is no requirement in the RFP for a "masterplan" cash flow projection, or for "projections" of any kind. What is required is the "20-year cash flow analysis" [underlining added] that the RFP specified.
30. Thus Hines/Rays submitted a non-responsive bid. It also appears to have failed to meet other requirements in the RFP, but such matters are not the subject of this civil complaint.
31. However, by referring to the material only as "projections," Hines/Rays failed to provide the required "general description of the information designated as a trade secret and/or confidential and/or proprietary" of section 22.

32. The term "projections" is used twice in Exhibit D-1 and not identified as the "general description" required, and there is nothing else in their text that could qualify as such. A single word is not a "general description" but rather a title or rubric.
33. Because Hines/Rays failed to provide said general description, Hines/Rays' own action are that "waiver by Proposer to claim that any information in its Proposal is a trade secret and/or confidential and/or proprietary, regardless of whether such information is labeled trade secret and/or confidential and/or proprietary. record in dispute loses its exempt status" that Section 22 speaks of.
34. Furthermore: although the language in Exhibit D-1 may comply with the requirements in the RFP, it does not follow that the entire record that follows the cover page provided then becomes exempt. Redacted portion of the record could have been provided, and the City made no attempt to do so.
35. Simply asserting that a record is exempt from disclosure on the grounds that it is a trade secret and/or confidential and/or proprietary does not make it so. Because the City has not made a Determination, this court must do so, or order the City to do so.
36. In *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693, 699 (Fla. 1969) (henceforth "Doran") the Florida Supreme Court held that "statutes enacted for the public benefit should be interpreted most favorably to the public."
37. The latest available "Government in the Sunshine Manual" (2023), published by the Florida Office of the Attorney General, cites the Doran decision as a basis for stating that "as a statute enacted for the public benefit, the Sunshine Law should be liberally construed to give effect to its public purpose while exemptions should be narrowly construed" [underlining added].
38. Sec. 119.07, Fla. Stat., the Florida Public Records Law, is exactly that kind of statute that was "enacted for the public benefit" and therefore "should be interpreted most favorably to the public" (*Doran*).

WHEREFORE, Plaintiff respectfully requests that this Court:

- a) Grant this matter expedited consideration pursuant to Sec. 119.11(1), Fla. Stat.;
- b) Issue an alternative writ of mandamus directing the City to produce the records requested by Plaintiff;
- c) Issue a peremptory writ directing the City to make all records in its possession, custody or control that are responsive to Plaintiff's request for public records immediately available;
- d) Award Plaintiff his attorney's fees and costs as provided by Sec. 119.12(1), Fla. Stat.; and
- e) Grant such other and further relief this Court deems appropriate.

Dated: March 5, 2024



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 5, 2024, the undersigned electronically filed the foregoing with the Clerk of Court using the Florida Courts E-Filing Portal. I further certify that a copy of the foregoing shall be served by process of service upon Defendant.

Dated: March 5, 2024

/s/ Thomas Rask  
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