

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION**

JIMMIE CAVIN

PLAINTIFF

v.

CASE NO. _____

ARKANSAS STATE POLICE

DEFENDANT

COMPLAINT

Comes now the Plaintiff, Jimmie Cavin, and for his cause of action against the Defendant, Arkansas State Police, states:

NATURE OF THE ACTION AND PARTIES

1. This is an action brought pursuant to the Arkansas Freedom of Information Act of 1967 (herein “FOIA”), as amended, codified as Ark. Code. Ann. § 25-19-101 *et seq.*

2. Plaintiff Jimmie Cavin is an adult citizen of the State of Arkansas and a resident of Faulkner County. Plaintiff brings this action as a matter of right under Arkansas Code Annotated § 25-19-107, as the Defendant has actively and constructively denied Plaintiff’s FOIA requests and improperly altered public records in contravention of FOIA.

3. This cause of action seeks declaratory and injunctive relief. This Court has subject matter jurisdiction over the Complaint for declaratory and injunctive relief pursuant to Arkansas law.

4. The Arkansas State Police (hereinafter referred to as “ASP”), a division within the Arkansas Department of Public Safety and funded partially or wholly by public money, is responsible for supplying specific public records as defined by the Arkansas Freedom of Information Act (AFOIA) to Arkansas residents, except where explicitly exempted by law.

5. Jurisdiction and venue are appropriate in the Court pursuant to Ark. Code Ann. § 25-19-107(a), as Pulaski County is the appropriate jurisdiction and venue for FOIA lawsuits brought against the State of Arkansas or one of its departments, agencies, or institutions.

6. The AFOIA defines "public records" broadly to include all forms of documented information, ensuring that such records are made available for public inspection. According to Ark. Code Ann. § 25-19-103(7)(A):

"Public records means writings, *recorded sounds, films, tapes, electronic or computer-based information*, or data compilations in any medium required by law to be kept or otherwise kept and that constitute a record of the performance or lack of performance of official functions that are or should be carried out by a public official or employee [or] a governmental agency...that is wholly or partially supported by public funds or expending public funds." [emphasis added]

FACTUAL BACKGROUND (Violations #1 and #2)

7. On March 6, 2024, Agents with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) applied for and received a search warrant for the home of Bryan Malinowski, Executive Director of the Bill and Hillary Clinton National Airport, on suspicion that he had sold firearms without a license. The search warrant authorized the ATF to search the property between the hours of 6:00am and 10:00pm on or before March 20, 2024.

8. On March 19, 2024, at approximately 6:00 a.m., ATF Agents, with the assistance of members of the Little Rock Police Department (hereinafter referred to as “LRPD”), executed the search warrant on Mr. Malinowski’s home using a “knock-and-announce” procedure.

According to dash cam footage from a LRPD cruiser, lights and siren were activated for approximately two seconds at the beginning of the raid. ATF Agents then knocked and announced their presence and waited just 28 seconds before breaching the door with a battering ram.

9. After ATF agents breached the door, Mr. Malinowski reportedly opened fire, prompting an ATF agent to return fire with an M4 carbine. Mr. Malinowski was shot in the head during the raid and died two days later. According to the ASP investigative report, none of the ATF agents or LRPD officers involved in the raid were equipped with body cameras.

10. At the request of the ATF and LRPD, the Arkansas State Police were assigned to investigate the shooting.

11. On June 29, 2024, the Plaintiff submitted a FOIA request to the ASP for the entire investigation file concerning the circumstances surrounding Bryan Malinowski's death. (See **Exhibit A**; Initial FOIA Request)

12. On July 1, 2024, the Plaintiff received a link to access the ASP investigative file. The file included audio recordings of interviews with each of the ATF agents and LRPD officers involved in the raid. Importantly, no video recordings of the interviews were included in the file.

13. On July 15, 2024, Plaintiff contacted a representative from ASP to request the video recordings of the file. (**Exhibit B**) The ASP representative stated that CID (Criminal Investigation Department) did not video record the interviews. (**Exhibit C**)

14. Upon reviewing the audio files provided by the ASP, it was discovered that several of the files are in MP4 format, a format typically associated with video. The file properties further indicate the presence of video data; specifically, the files include frame width and height, data rate, and frame rate metrics. These properties are consistent with video content, not just audio.

15. Additionally, there is evidence that the files were intentionally altered to remove the video component. A specialized program confirmed that there was originally a video component associated with the file that was subsequently extracted. This alteration process was clearly identifiable through the program's analysis and with the inconsistencies between the files' video-specific metadata and their audio-only content. This suggests that the original videos were likely intentionally removed.

16. On July 31, 2023, Plaintiff sent a second FOIA request to ASP seeking: 1) the make/model/identification number of the device(s) used to record the interviews of the ATF and LRPD officers; and 2) the original media file created by each device for each interview. (**Exhibit D**; July 31, 2024, email)

17. In response, an ASP representative curiously reiterated that there are no videos of the interviews and provided none of the requested documentation. (**Exhibit D**; August 1, 2024 email at 10:04am) ASP then asked for clarification about what was being requested despite the request being clear and straightforward. (**Exhibit D**; August 1, 2024 email at 1:44pm) To date, ASP has not provided the original media files, or the make/model/identification number of the device(s) used to record the interviews of the ATF and LRPD officers.

VIOLATION #1: ASP's Failure to Provide the Video of the Interviews

18. Pursuant to the Ark. Code Ann. § 25-19-103, all forms of documented information related to official functions are subject to public access and must be provided in their original, unaltered format unless a specific exemption applies.

19. There is an exception under the FOIA for records related to ongoing investigations, which allows certain records to be withheld if their disclosure would interfere with the investigation. However, the Arkansas State Police have not cited any specific exemption

applicable to the video recordings, and the ongoing investigation exception does not justify withholding the video recordings in this case. The exclusion of the video component of the files, while the audio was provided, indicates that the withholding was not justified under any legal exemption.

20. The removal of the video recording components of these investigative interviews undermines the Plaintiff's and the public's ability to fully evaluate and understand the circumstances of Bryan Malinowski's death. The AFOIA is designed to ensure transparency and accountability in government actions. By withholding part of the original records, or by deliberately concealing them, the Arkansas State Police have actively obstructed public scrutiny and hindered the ability of the public to hold law enforcement accountable.

VIOLATION #2: ASP's Failure to Provide the Specifications for the Recording Devices

21. Pursuant to Ark. Code Ann. § 25-19-103, all forms of documented information related to official functions are subject to public access and must be provided in their original, unaltered format unless a specific exemption applies. This includes the specifications for devices used to record official interviews.

22. On July 31, 2024, Plaintiff submitted a FOIA request to ASP seeking the make, model, identification number, and specifications for each device used to record interviews of the ATF and LRPD officers. This request was clear and straightforward, specifying the exact information and records sought.

23. Despite the clarity of the request, ASP's response on August 1, 2024, failed to address or provide the requested documentation. Instead, ASP reiterated that no video recordings exist and sought clarification on the request, which had already been clearly articulated.

24. Pursuant to Ark. Code Ann. § 25-19-105(c), a public agency is required to respond

to a FOIA request within three business days. ASP's failure to provide the specifications for the recording devices, or to conduct an adequate search to determine which devices were used, constitutes a violation of the AFOIA.

FACTUAL BACKGROUND (Violation #3)

25. An ATF “Operational Plan” for serving a warrant is a comprehensive document that outlines the steps and procedures for executing a search or arrest warrant. This document typically includes the objectives, intelligence, team roles, timing, description of the property to be searched, case background, and tactical plan associated with the execution of an arrest or search warrant.

26. The ATF Operational Plan for the raid on Bryan Malinowski’s home was not included in the materials provided to the Plaintiff by ASP in response to his initial FOIA request dated June 29, 2024.

27. Subsequently, Plaintiff filed a FOIA request with the Pulaski County Prosecuting Attorney’s Office, requesting the case file related to the shooting death of Bryan Malinowski. In their response, the Pulaski County Prosecuting Attorney’s Office provided the ATF Operational Plan to Plaintiff.

28. On information and belief, the Pulaski County Prosecuting Attorney’s Office obtained the ATF Operational Plan from ASP. This raises a significant question: if the Pulaski County Prosecutor’s Office received the Operational Plan from ASP, why was this document not included in ASP’s response to the Plaintiff’s FOIA request, despite ASP clearly having possession of it?

VIOLATION #3: ASP's Failure to Provide the ATF Operational Plan

29. Ark. Code Ann. § 25-19-105(a) requires that "...all public records shall be open to inspection and copying by any citizen of the State of Arkansas..." This section enforces the obligation of agencies to provide access to public records unless a specific exemption applies.

30. AFOIA allows for certain records to be withheld under specific exemptions, as outlined in Ark. Code Ann. § 25-19-105(b). The ASP has not cited a specific exemption applicable to the ATF Operational Plan, and as such, the withholding of this document was unjustified.

31. In arguendo, even if the ASP had invoked the exemption for ongoing investigations under Ark. Code Ann. § 25-19-105(b)(6), which allows withholding of records related to undisclosed investigations of suspected criminal activity, this exemption would not apply to the ATF Operational Plan. The ATF Operational Plan contains procedural and logistical details about executing the search warrant, rather than information about ongoing criminal activity or a criminal investigation. Thus, the ASP's withholding of the ATF Operational Plan was unjustified and constitutes a violation of FOIA.

32. The Arkansas Freedom of Information Act states: "It is vital in a democratic society that the public business be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decision that are reached in public activity and in making public policy. Toward that end, this [act] is adopted, making it possible for them, or their representatives to learn and report fully the activities of their public officials." As the United States Supreme Court has stated, "The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." *NLRB v. Robbins Tire Co.*, 437 U.S. 214, 242.

33. Plaintiff respectfully requests that the Court declare that the Arkansas State Police have violated the AFOIA by failing to provide the video components and original media files for the investigative interviews of the ATF and LRPD officers; by failing to provide the specifications for the recording devices used in the interviews; and by failing to provide the ATF Operational Plan related to the raid on Bryan Malinowski's home.

34. The Plaintiff further requests that the Court issue an order compelling the Arkansas State Police to immediately produce the video components of the investigation file, as originally maintained; immediately produce the ATF Operational Plan; and immediately provide the make, model, identification number, and specifications for each device used to record the interviews of the ATF and LRPD officers.

36. The Plaintiff respectfully requests that the Court order the Arkansas State Police, including all individuals involved in the production of public records, to undergo comprehensive training on the Arkansas Freedom of Information Act. This training should be designed to ensure that all personnel are fully informed of their obligations under the law, thereby preventing future violations and ensuring compliance with FOIA requirements.

37. The Plaintiff respectfully requests that the Court enjoin the Defendant from engaging in the actions described in the complaint, including but not limited to improperly modifying public records, failing to produce public records, and withholding information subject to the Arkansas Freedom of Information Act.

Prayer for Relief

WHEREFORE, the Plaintiff prays that the Court declare that the Arkansas State Police have violated the AFOIA by failing to provide the video components and original media files of the investigative interviews of the ATF and LRPD officers; order the Arkansas State Police to

immediately provide the video recordings in their original, unaltered form as part of the investigative file; declare that the Arkansas State Police have violated the AFOIA by failing to provide the specifications for the recording devices used in the interviews; order the Arkansas State Police to immediately provide the make, model, identification number, and specifications for each device used to record the interviews; declare that the Arkansas State Police have violated the AFOIA by failing to provide the ATF Operational Plan related to the raid on Bryan Malinowski's home; order the Arkansas State Police to immediately provide the ATF Operational Plan; order the Arkansas State Police, including all individuals involved in the production of public records, to undergo comprehensive training on the Arkansas Freedom of Information Act; enjoin the Defendants from engaging in the actions described in the complaint, including but not limited to improperly modifying public records, failing to produce public records, and withholding information subject to the Arkansas Freedom of Information Act; award costs and attorney's fees; and grant such other relief as is just and proper.

Respectfully submitted,



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Jimmie Cavin

From:jimmie.cavin@yahoo.com

To:mike.hagar@asp.arkansas.gov

Cc:Joan Shipley,hugh.finkelstein@asp.arkansas.gov

Bcc:Dave Elswick

Sat, Jun 29 at 8:10 PM

Hey Mike, 😊

Under the Arkansas Freedom of Information Act I request in electronic form via email the Investigation file into the death of Bryan Malinowski.

Thank you !

Jimmie Cavin

501-412-9520



Tess Bradford

From:tess.bradford@asp.arkansas.gov

To:jimmie.cavin@yahoo.com

Mon, Jul 1 at 9:23 AM

Good morning Mr. Cavin,

I am separately forwarding you a link to access the ASP investigative file for Bryan Malinowski. Redactions were made pursuant to the following:

1. Ark. Code Ann. § 25-19-105(b)(13) (personal contact information)
2. Op. Att'y Gen. 2007-064 (dates of birth of public employees)

Arkansas State Crime Lab records were removed pursuant to Ark. Code Ann. § 12-12-312. Medical records were also removed pursuant to Ark. Code Ann. § 25-19-105(b)(2).

One federal-agency (ATF) record was removed pursuant to 5 U.S. Code § 552(b)(7) (investigatory record).

If you have any questions or have any issues accessing the file, please let me know.

Thank you,

Tess Bradford

Arkansas Department of Public Safety

Arkansas State Police Division

(501) 618-8583

Jimmie Cavin

From:jimmie.cavin@yahoo.com

To:Tess Bradford

Cc:Mike Hagar,Hugh Finkelstein,Joan Shipley

Mon, Jul 15 at 7:54 AM

Hey Tess hope you had a great weekend !

It appears that file numbers 0340-21, 0340-22, 0340-26, 0340-27, 0340-31 and 0340-33 are missing from what you sent me.

Also are there videos of the interviews ?

As usual I need your help please.

Thanks for all you do !!

Jimmie



Tess Bradford

From:tess.bradford@asp.arkansas.gov

To:Jimmie Cavin

Cc:Mike Hagar,Hugh Finkelstein,Joan Shipley

Mon, Jul 15 at 8:54 AM

Good morning Mr. Cavin!

I hope you had a good weekend as well. Here is the information regarding the specific files you are referring to:

Subfolder 21 contained an Arkansas State Crime Lab record that was removed. Subfolder 21's attachment is identified and described on page 66 of the Case Master Report.

Subfolder 22 contained Arkansas State Crime Lab/autopsy photographs that were removed. Subfolder 22's attachments are identified and described on page 67 of the Case Master Report.

Subfolder 26 contained Arkansas State Crime Lab records that were removed. Subfolder 26's attachments are identified and described on page 72 of the Case Master Report.

A subfolder file numbered "27" and "31" were never generated for this casefile because Reports 27 (page 73 of the Case Master Report) and 31 (page 86 of the Case Master



Report) do not contain attachments that would require a subfolder.

Subfolder 33 contained the Arkansas State Crime Lab/autopsy report that was removed. Subfolder 33's attachment is identified and described on page 86 of the Case Master Report.

Regarding the interviews, CID only has the audio recorded interviews. These interviews were not video recorded.

If you have any other questions, please do not hesitate to contact me.

Thank you,

Tess Bradford

Arkansas Department of Public Safety

Arkansas State Police Division

(501) 618-8583

Hey Tess no worries 😊

I believe what I am requesting is pretty clear however let me re-state -

The make, model, identification number and specs for **each device** used to record the interviews with agent Merrill, agent Hicks, agent Boles, agent Bass, agent Dillard, agent Sprinkles, agent Ness, agent Griggs, agent Cowart, TFO Gibbons, TFO Woodall, Officer Lakey and Officer Williams along with the **original file created by each device for each interview.**

Let me know if there are questions.

Thanks !

Jimmie

On Thursday, August 1, 2024 at 01:44:19 PM CDT, Tess Bradford <tess.bradford@asp.arkansas.gov> wrote:

Good afternoon Mr. Cavin,

I apologize – I originally assumed you were only seeking the “make, model, identification number and specs for each device” used and the “original file” for any responsive video recordings of the interviews of the specific officers, versus the previously provided audio recording interviews of those officers.

If you are looking for the information for the audio recordings, I’ll forward your request to CID and request a record that they maintain that contains the “make, model, identification number and specs for each device” used for the interviews. When you ask for the “original file” of the audio recording, are you requesting a record that delineates which audio recording came from which device?

Again, I apologize if there was misunderstanding on my end!

Tess Bradford



Arkansas Department of Public Safety

Arkansas State Police Division

(501) 618-8583

From: Jimmie Cavin <jimmie.cavin@yahoo.com>

Sent: Thursday, August 1, 2024 1:13 PM

To: Tess Bradford <tess.bradford@asp.arkansas.gov>

Cc: Mike Hagar <mike.hagar@asp.arkansas.gov>; Hugh Finkelstein <hugh.finkelstein@asp.arkansas.gov>; Joan Shipley <joan.shipley@asp.arkansas.gov>

Subject: Re: FOI Request - Malinowski

Hey Tess appreciate it 😊

For clarity this is the response to the request correct ?

Thanks !

Jimmie

On Thursday, August 1, 2024 at 10:04:34 AM CDT, Tess Bradford <tess.bradford@asp.arkansas.gov> wrote:

Good morning, Mr. Cavin! I followed up with CID on your email. I received confirmation that there are no videos of the interviews. If there is anything else I can do or follow up on, please let me know.

Tess Bradford

Arkansas Department of Public Safety

Arkansas State Police Division

(501) 618-8583

From: Jimmie Cavin <jimmie.cavin@yahoo.com>
Sent: Wednesday, July 31, 2024 4:18 PM
To: Tess Bradford <tess.bradford@asp.arkansas.gov>
Cc: Mike Hagar <mike.hagar@asp.arkansas.gov>; Hugh Finkelstein <hugh.finkelstein@asp.arkansas.gov>; Joan Shipley <joan.shipley@asp.arkansas.gov>
Subject: Re: FOI Request - Malinowski

Hey Tess hope you are having a great day.

In regard to the interviews with the agents and officers my research into them shows that they were indeed video recorded.

Under the AFOIA I request in electronic form via email the make, model, identification number and specs for each device used to record the interviews with agent Merrill, agent Hicks, agent Boles, agent Bass, agent Dillard, agent Sprinkles, agent Ness, agent Griggs, agent Cowart, TFO Gibbons, TFO Woodall, Officer Lakey and Officer Williams along with the original file created by each device for each interview.

Thanks !