

IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
CIVIL DIVISION

BOB GREGORY

PLAINTIFF

V

NO. CV-18-_____

JIM BAKER,
in his official capacity as
FAULKNER COUNTY JUDGE

DEFENDANT

COMPLAINT AND REQUEST FOR IMMEDIATE HEARING

COMES NOW the Plaintiff, Bob Gregory, by and through his attorney Joey McCutchen of McCutchen and Sexton Law Firm, and for his cause of action against defendant, Jim Baker, in his official capacity as Faulkner County Judge, hereby states:

1. Plaintiff Bob Gregory is an adult citizen of the State of Arkansas, whose address is in, Faulkner County, Arkansas. He brings this cause of action as a matter of right under Ark. Code Ann. § 25-19-107.

2. This is an appeal from a denial of rights under the Arkansas Freedom of Information Act (herein "FOIA") pursuant to Ark. Code Ann. § 25-19-107(a).

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. Defendant Judge Jim Baker is a public official of Faulkner County, tasked with providing, upon request, access to public records defined in Ark. Code Ann. § 25-19-103(5)(a)

5. This Court has subject-matter jurisdiction pursuant to Ark. Code Ann. § 25-19-107(a) which provides:

"Any citizen denied the rights granted to him or her by this chapter may appeal immediately from the denial to the Pulaski County Circuit Court or to the circuit

court of the residence of the aggrieved party, if the State of Arkansas or a department, agency, or institution of the state is involved, or to any of the circuit courts of the appropriate judicial districts when an agency of a county, municipality, township, or school district, or a private organization supported by or expending public funds is involved.”

Pursuant to this subsection, venue is proper in this action in the Faulkner County Circuit Court.

6. Ark. Code Ann. § 25-19-103(5) (A) defines public records as follows:

“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, a governmental agency, or any other agency wholly or partially supported by public funds or expending public funds. All records maintained in public offices or by public employees within the scope of their employment shall be presumed to be public records.”

7. On October 24, 2018, Faulkner County Judge Jim Baker sent an email to numerous recipients. The subject of the email said “RELEASE: President Signs Water Infrastructure Law That Includes Boozman Initiative.” The body of the email said, “This is great, right now I am trying to get votes for re elect to help on these issues. Please contact all you can to go vote,.....I need it[.]” See Exhibit A, attached hereto and incorporated herein by reference.

8. In response to such mass emailing, on October 25, 2018, Plaintiff submitted a FOIA request to the Defendant asking for all emails, outbound and incoming, addressed to or from Defendant’s public email account, for the period of August 1, 2018 through October 25, 2018. (See Exhibit B) Such items are within the possession of Faulkner County and are public records, as that term is used in FOIA.

9. On October 30, 2018, after not receiving the documents, Plaintiff spoke with Faulkner County Attorney David Hogue, who stated that the Defendant refused to turn over the

materials requested by Plaintiff. Neither Defendant and nor any representatives of Faulkner County have given any justification for refusing to release the requested documents.

10. The Defendant has failed to turn over the requested documents within three working days pursuant to Ark. Code Ann. § 25-19-105(e).

11. Defendant's breach is both the legal and proximate cause of Plaintiff's inability to obtain public records to which he was legally entitled under Ark. Code Ann. § 25-19-105.

12. For the foregoing reasons the Court should order Defendant to produce the documents requested by the Plaintiff and grant Plaintiff fees and costs in pursuing this matter.

WHEREFORE, the Plaintiff, Bob Gregory, prays that the Court grant the relief requested herein; that an immediate hearing be held; that the Defendant be ordered to comply with the FOIA

request of the Plaintiff; that the Defendant be directed to promptly produce the requested documentation; that the Court should assess attorney's fees and costs against the Defendant, and Plaintiff further prays for such other relief as is just and proper.

Respectfully submitted,
Bob Gregory, Plaintiff



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P.O. Box 1971
Fort Smith, AR 72902
Phone (479) 783-0036
Facsimile (479) 783-5168

From: Jim Baker [Jim.Baker@faulknercounty.org]
To: Don Bradley

Sent: Wed 10/24/18

Cc: Andy Gill; Anushree Junde; Bart Castiberry; Bess Jones; Bill Hannah; Bill Hegeman; Brad Lacy; Branch Satterfield; Brandon Resaecker; Brandon Zinser; Bret Carroll; Burny Adcock; Charles Nabholz; Cheryl B. Garner; Corey Parks; Cory Fox; David Andrews; David Hogue; Meeks, David; Dede Smith; Dennis Oakley; Dorrny Bradley; Doug Brandon; Doug Voss; Dr. Larry Davis; Dustin Tackett; Eddie Jackson; Harold Helton; Harold Hill; J. W. Misener; J.D. Lowery; Jack Bell; Jason Ables; Jason Rap; Jason Trantna; Jerry L. Smith; Jessica Rohman; Jessie Jones; Jimmy Harris; John Gordon; John Jordan; John Nabholz; John Roland; Johnny Brady; Judge Jimmy Hart;
Subject: Re: RELEASE: President Signs Water Infrastructure Law that Includes Boozman Initiative

This is great, right now I am trying to get votes for re elect to help on these issues. Please contact all you can to go vote.....I need it.

Sent from my iPhone

On Oct 24, 2018, at 9:57 AM, Don Bradley <don_bradley@conwaycorp.net> wrote:

FYI, Good News

From: Deidre Smith <Deidre.Smith@arkansas.gov>
Content-Model: Text

Bob Gregory
332 Skunk Hollow Road
Conway Arkansas 72032

October 25, 2018

The Honorable Jim Baker
Faulkner County Judge
801 Locust Street
Conway, Arkansas 72032

Dear Judge Baker:

Under the Arkansas Freedom of Information Act § 25-19-101 et seq., I request electronic copies via email or electronic disk of these public records relating to Faulkner County governmental operations:

All email, outbound and incoming addressed to or from jim.baker@faulknercounty.org for the period August 1, 2018 to October 25, 2018

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$10. However, I would also like to request a waiver of all fees, in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the operation of Faulkner County. This information is not being sought for commercial purposes.

The Arkansas Freedom of Information Act requires a response within three (3) business days. If access to these requested records will take longer, please contact me about when you expect to make the electronic records available, and so will expect provision of the requested email on or before end-of-business October 30, 2018.

If you deny any part of this request, please cite the specific exemption you feel justifies a refusal to release the information, and notify me of the appeal procedures available to me under the law.

Thank you for attention to this matter.

Sincerely,

Bob Gregory
501-514-0727

EXHIBIT B