
Appendix

APPENDIX

TABLE OF CONTENTS

| | |
|------------|--|
| Appendix A | Final Order Denying the Second Amended Petition for Writ of Mandamus/Phase 2 entered January 21, 2020.....App. 1 |
| Appendix B | Per Curiam Affirmed (PCA) Order of the Florida Second District Court of Appeals entered March 10, 2021.....App.12 |
| Appendix C | Order Denying the Petition for Rehearing, Rehearing En Banc, Written Opinion, and Certification of Important Question(s) to the Florida Supreme Court by the Florida Second District Court of Appeals entered April 21, 2021.....App. 13 |
| Appendix D | Order Denying the Second Amended Petition in Part for Writ of Mandamus/Phase 1 entered January 11, 2019.....App. 14 |
| Appendix E | Order Denying Certiorari Review of January 11, 2019 Phase 1 Order by Florida Supreme Court on the basis of Jurisdiction / Appeal Interlocutory entered May 21, 2019.....App. 33 |
| Appendix F | Alternative Writ finding Petitioner's Writ facially sufficient entered June 25, 2015.....App. 34 |
| Appendix G | Second Amended Petition for Writ of Mandamus.....App. 36 |
| Appendix H | Motion for Summary Judgment Proceeding Excerpt on January 10, 2018 denying MSJ in chambers.....App. 62 Order denying Motion for Summary Judgment entered on February 9, 2018.....App. 78 |

1. Eleven (11) requests were at issue

| | |
|-----------------------------------|------------|
| Appendix Final Order, ftn. 6..... | App. 3 |
| Second Amended Petition..... | App. 42-57 |
| Public record requests..... | App. 79 |

2. IT and high-cost clerical assistance not required to search / redact agency records at issue.Expert Opinion, Microsoft Office Outlook

Microsoft Outlook Search does not require IT.

A search of over 100,000 records with similar criteria used by Respondent can be completed by end-users, without IT, in less than 5 seconds.

Lisa Hendrickson, Call That Girl.....App. 92

Keith Samsell, former Assoc. Dir. Systems, USF.....App. 99

Notarized Opinion, Records Management Expert

37 Hours and less than \$4000 in expense to

Segregate and redact 2,735 emails

Jeffery Cohn, Business Records Management, Inc.....App. 94

3. Respondents understood the agency's duty to provide nonexempt agency records8/14/2015 Deposition of Dr. Paul Dosal

Designation 10: 1-18.....App. 130

4. Agency records existed for request #18/14/15 Deposition Excerpt of Paul Dosal

Dosal testified he met with Ms. DeBose on

6/23/2014 to discuss a troubling email

that he received.....App. 154

Designation pg. 22: 25.....App. 131

Designation pg. 23: 1-2.....App. 132

Designation pg. 25: 1-8.....App. 133

Ms. DeBose stated that she was
aware of the existence of the email
Designation pg. 26: 4-11.....App. 134

Dosal provided the email for request #1
when he asked to produce it by Respondent
Designation pg. 50: 4-8; 22-23.....App. 136

There were other emails for request #1 that
Dosal decided not provide to Ms. DeBose
Designation pg. 46: 7-12, 21-23.....App. 135

Dosal was *instructed not to answer* by
USFBOT's attorney if Ms. DeBose
asked him personally for his emails
DesignationApp. 179

11/2/2018 Evidentiary Hearing

Dosal identified the email he provided for request #1
Designation pg. 35:1-25.....App. 142

The Circuit Court conceded the email was not
produced until one year later based on Dosal's
testimony
Designation pg. 38:19-25.....App. 143

Dosal testified that he provided the email for
request #1 to Gerard Solis, USF General Counsel
in mid-March 2015
Designation pgs. 42:1-11; 43:1-25; 44-1-3.....App. 144

Respondent did not provide any email to Ms.
DeBose for request #1 until 6/19/2015, after
the Petitioner again requested the email.
Respondent sought to reset the date of the
Request #1 to 6/15/2015, in bad faith.....App. 153

Petitioner's second request for the email on
06/15/2015 referred back to her original
request for the agency record to Dosal on
6/23/2014.....App. 79

11/16/2016 Deposition of Paul Dosal

Dosal admitted that Ms. DeBose personally asked him for a copy of the email at issue for request #1 and that he refused

Designation 46: 2-9.....App. 140

8/14/2015 Deposition Excerpt of Robert ("Bob") Sullins

Respondent initially claimed the significant one-year delay in providing the email(s) for request #1 was because the search required IT assistance. Sullins, the custodian/sender of the email testified that the search was not difficult, that he searched Outlook himself and that he found the email without IT

Designation pg. 16: 18-25; 17: 1-3.....App. 122

5. Agency records existed for request #4 but were not produced by USFBOT until 398 days later

Respondent's charge document for request #4

Estimated 2,735 emails on September 3, 2015.....App. 156

Respondent waived the fee did not withhold records for request #4 on the basis of FERPA

Respondent redacted student names, waived the redaction fee, and provided agency records, making the statement that Petitioner agreed to "*safeguard the FERPA records*" that inadvertently remained.....App. 104

Respondent used an improper Search Cut-off Date

4/22/2015 email from Gerard Solis, USF General Counsel, produced records through March 27, 2015 for request #4. The Respondent did not provide emails on 4/22/2015 but instead delayed until September 3, 2015.....App. 155

9/13/2015 email from Gerard Solis, USF General Counsel, produced records through March 27, 2015 for request #4. The Respondent did not provide emails up to the "present" date, or system date that the file was produced of September 3, 2015, but instead cut-off emails in March, April, and May of 2015.....App. 103

Petitioner filed Deficiency Notice to Respondent

~~Petitioner filed 9/14/2015 notice that agency~~
records produced in response to request #4 were
deficient.....App. 171

Expert Affidavit of Cheryl Harris, Trinity Consulting Svcs.

Only 29 emails produced for March 2015 and
the agency records were repeated with 65-70%
duplication.....App. 97

6/22/2018 Evidentiary Hearing

The Circuit Court determined the cut-off date
should have been through May of 2015
Designation pg. 124: 20-25.....App. 109

Evidentiary Hearing, 11/2/2019

The Respondent knowingly excluded emails that
existed that contained derogatory language
about Ms. DeBose
Designation pgs. 55:17-25; 56:1-4App. 145

**6. Agency record(s) for request #5 existed but were not
produced**

9/3/2015 Deposition of Caurie Waddell

Caurie Waddell met with HR for an
Employment Exit Interview
Designation pg. 14: 10-13.....App. 126

5/21/2019 Evidentiary Hearing

USFBOT initially denied but was forced to
admit on the record to the Court that
Caurie Waddell met with HR for an
Employment Exit Interview
Designation pg. 19:7-23.....App. 152

Affidavit of Gerard Solis, USF General Counsel

Solis attested that exit interviews are expected
to be kept in the employee's file in HR
¶ 11.....App. 106

**7. Telephone records existed for request #6 but
Respondent misrepresented that no such
agency records existed**

The Respondent stated phone records

were considered transitory and had been
deleted / purged

Affidavit of Gerard Solis, ¶7.....App. 106

8/25/2015 Email of Gerard Solis.....App. 160

The Respondent omitted the fact that
phone records must be kept if litigation
is anticipated or if there is an employment
dispute.....App. 159-60

The Respondent's employee, Gerard Solis,
had actual knowledge of an employment
dispute and/or the potential for litigation

PRR #6 (phone calls in June 2014).....App. 85

Email from Dosal on August 14, 2014.....App. 166

5/22/2019 Evidentiary Hearing

The Respondent misrepresented the search
conducted for two phone numbers provided
by Petitioner.....App. 172-73

Affidavit of Gerard Solis

¶ 12.....App. 106

Testimony of Nora Santiago, USF IT-Central Admin.

Request #6

Only two numbers were searched—4-1680
and 4-2131 belonging to Gerard Solis and the
General Counsel's Office

Designation pg. 22: 15-18.....App. 177

Designation pg. 23: 6-7.....App. 173

The numbers provided by DeBose were not
searched.

Designation pg. 27: 5-10.....App. 113

Respondent falsely claimed the phone records
requested for #6 were deleted in 2014/2015

Designation pg. 29: 18-24.....App. 114

The Respondent misrepresented that no
records existed for request #6, though a

~~10. Agency records existed for Request #10 but were not provided. Ms. DeBose challenged the redaction charges, requesting supervised inspection. Ms. DeBose also requested waiver of the FOIA fee and agreed to safeguard any FERPA records, as she did concerning request #4, but Respondent refused.~~

Charge Document.....App. 168

Email from Petitioner offering supervised inspection.....App. 169

11. Agency records for Request #11 existed but were not provided. Petitioner told to get them from contractor, Ellucian, L.P.

Request #11.....App. 91

11/2/2018 Evidentiary Hearing

Records were provided to third party LaVonne
"Sarati" Washington but not Petitioner

Designation pg. 301.....App. 146

Designation pg. 303.....App. 147

Records were provided to third party Tony
Embry but not Petitioner

Designation pg. 323.....App. 148

Designation pg. 329.....App. 149

Designation pg. 327:20-25; 328:1-17.....App. 149

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

ANGELA DEBOSE,
Petitioner/Plaintiff,

v.

CASE NO.: 15-CA-005663
DIVISION: C

UNIVERSITY OF SOUTH FLORIDA
BOARD OF TRUSTEES, UNIVERSITY
OF SOUTH FLORIDA ACADEMIC AFFAIRS
OF USF, STUDENT SUCCESS OF USF,
and PAUL DOSAL,

Respondent/Defendant.

FILED
CLERK OF CIRCUIT COURT
2020 JAN 21 PM 3:28
HILLSBOROUGH COUNTY, FLORIDA
CIVIL

FINAL ORDER DENYING
SECOND AMENDED PETITION FOR WRIT OF MANDAMUS

THIS CASE last came before the Court on November 15, 2019, for the final segment of the final evidentiary hearing on Petitioner, ANGELA DEBOSE's ("Petitioner") *Second Amended Petition for Writ of Mandamus and for Violation of the Florida Public Records Law and Relief Pursuant to Article 1, Section 24 of the Florida Constitution and Chapter 119 and Chapter 86*, filed on June 30, 2018 ("Second Amended Petition" or "Petition"), against Respondents, UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES ("USF"), UNIVERSITY OF SOUTH FLORIDA ACADEMIC AFFAIRS OF USF ("USF AF"), STUDENT SUCCESS OF USF ("USF SS"), and PAUL DOSAL ("Dosal") (USF, USF AF, and USF SS sometimes may be referred to hereinafter collectively as "USF"). USF filed a *Response to Second Amended Petition for Writ of Mandamus* on July 20, 2018.

This case involves a variety of Public Records Requests ("PRR") made by Petitioner on USF directly or through various USF employees and her corresponding allegations that USF did not comply with its obligations under the Public Records Law found in Chapter 119, Florida Statutes. A multitude of evidentiary hearings were devoted to the initially filed petition and subsequently filed amendments. Those hearing dates (and the approximate length of each hearing) included March 2, 2018 (nearly four hours), June 28, 2018 (nearly six hours), October 9, 2018 (nearly six hours), November 2, 2018 (nearly eight hours), April 3, 2019 (nearly three hours), May 21, 2019 (nearly one hour), May 22, 2019 (nearly two hours), and November 15, 2019 (nearly one hour). After eight separate hearing dates devoted to the evidentiary hearing on Petitioner's initial petition, amended petition, and Second Amended Petition, and more than thirty hours of combined evidentiary hearing time over the course of this case, the final segment of the final evidentiary hearing was held on November 15, 2019. Petitioner and counsel for USF were present at the March 2, 2018, June 28, 2018, October 9, 2018, November 2, 2018, April 3, 2019, May 21, 2019, and

May 22, 2019, hearings. Petitioner declined and failed to appear at the November 15, 2019, hearing, however, and only counsel for USF appeared.¹

To again provide the parties one final opportunity to present argument to the Court, if they so desired, the Court entered an *Order on the Procedure and Deadlines for Submitting Proposed Orders on Petitioner's Amended Petition for Writ of Mandamus* on December 4, 2019. That order provided the parties until December 13, 2019, to submit to the Court for consideration, if they so choose, written closing arguments, as well as written findings of fact and conclusions of law.² On December 13, 2019, Petitioner filed *Closing Argument* and USF filed *Respondent USF Board of Trustees' Closing Argument*. That same day, USF also submitted to the Court via its divisional email address, with copy to Petitioner, *Respondent's Proposed Findings of Fact and Conclusions of Law*. On December 14, 2019, Petitioner filed *Petitioner's Proposed Findings of Fact and Conclusions of Law*.³

The Court has reviewed the voluminous record, including the transcripts of the several evidentiary hearings, as well as the testimony and documentary evidence presented by the parties; has considered the argument of Petitioner and counsel for USF; and has considered the applicable case law, statutes, and rules of procedure. With regard to the testimony of the witnesses presented, the Court observed the demeanor of each witness and assessed the credibility of each witness. Given the foregoing, the Court makes the following findings of fact and conclusions of law:

Relevant Procedural History

The Court finds it unnecessary to recite the entire, quite voluminous procedural history of this case. In relevant part, the Court notes that the operative pleading is the Second Amended Petition, which was filed on June 30, 2018. With respect to that pleading, on August 16, 2018, the Court entered an *Order Continuing Evidentiary Hearing*. That order outlined the process by which the Court would hear and resolve the pending issues. In pertinent part, the order provided that the issues presented in the Petition were to be bifurcated. On October 9, 2018, the Court would conduct an evidentiary hearing to address the reasonableness of fees charged in response to Petitioner's

¹ The Court notes that after having all other efforts to delay or cancel the final evidentiary hearing fail, Petitioner chose to voluntarily absent herself from the final evidentiary hearing which was held as scheduled on November 15, 2019. At the beginning of the November 15, 2019, hearing, the Court undertook additional efforts to offer Petitioner the opportunity to appear telephonically at the final evidentiary hearing by attempting to reach Petitioner on the telephone in open court. However, after trying all of Petitioner's known telephone numbers, and receiving no response from Petitioner, the hearing proceeded as scheduled.

² The Court notes that despite having announced in open court at the conclusion of the November 15, 2019, hearing that the deadline for these submissions would be December 6, 2019, in its December 4, 2019, order, the Court gratuitously extended the deadline to December 13, 2019, allowing the parties an additional week to submit its arguments and proposed orders. Despite this additional opportunity to present final arguments, and on an extended deadline, Petitioner filed a *Motion for Extension of Time*, seeking an additional 60 days, among other veiled complaints regarding the November 15, 2019, hearing and the Court's overall handling of the proceedings. That request was denied on December 11, 2019.

³ The Court additionally notes that both parties, with copies to each other, also submitted via email to the Court's divisional email its closing arguments and proposed orders. A copy of the hearing transcripts was also hand-delivered to the Court's chambers.

Public Records Requested But Not Provided ("PRRBNP") Numbers 5-14 and 21.⁴ Thereafter, on November 2, 2018, the Court would conduct an evidentiary hearing to address the remaining disputed issues, specifically PRRBNP Numbers 1 through 4, 15 through 20, 22, and 23.

Following the October 9, 2018, hearing on the reasonableness of fees, on January 11, 2019, the Court entered an *Order Denying Second Amended Petition, In Part*. That order addressed the bifurcated issue of the reasonableness of charges for producing documents in response to various public records requests made by Petitioner to USF. Among the other findings of fact and conclusions of law in that order, notably, the Court found that the total estimated costs of duplication, processing, labor, and production reflected in four separate charge documents were reasonable. Therefore, because Petitioner had not paid the reasonable costs associated with obtaining the documents she requested, the Court denied Petitioner's Second Amended Petition in part, as to PRRBNP Numbers 5 through 14, and 21 (otherwise identified as the August 12, 2015, PRR; the August 16, 2015, PRR; and the August 31, 2015, PRR). As a result of the Court's January 11, 2019, order, the remaining PRRBNPs to be addressed included 1 through 4, 15 through 20, 22, and 23.

The remaining PRRBNPs have been addressed over the course of multiple evidentiary hearings on March 2, 2018, June 28, 2018, November 2, 2018, April 3, 2019, May 21, 2019, May 22, 2019, and November 15, 2019. The final segment of the evidentiary hearing in this matter was held on November 15, 2019. This order follows to address the remaining PRRBNP Numbers 1 through 4, 15 through 20, 22, and 23.

Findings of Fact

There is no dispute that USF is a state agency subject to Chapter 119, Florida Statutes.⁵ The Court will address each of the remaining Public Records Requested But Not Provided below.

Public Records Requested But Not Provided No. 1

Public Records Requested But Not Provided No. 1 seeks "[a]ny and all Paul Dosal's emails for the months of March, April, and May of 2015." PRRBNP No. 1 corresponds to PRR No. 4, which was an August 8, 2014, "Internal Memorandum" from Petitioner to Rhonda Ferrell-Pierce, Equal Opportunity Consultant.⁶ PRR No. 4 requested that "[p]ursuant to the complaint [Petitioner has] filed, [Petitioner requests] Paul Dosal, Vice Provost, provide to [Petitioner] all email he has

⁴ The Court notes that the numbering for each request follows that which was provided in Petitioner's January 17, 2018, *Notice of Filing of the List of Public Records Requested But Responses Not Provided*. That document lists 21 Public Records Requested But Not Provided ("PRRBNP") that Petitioner claimed were at issue. On March 8, 2018, Petitioner filed a *Notice of Filing of the Amended List of Public Records Requested But Responses Not Provided*. (emphasis added). This document added one additional request—PRRBNP 22.

⁵ USF did dispute and assert an affirmative defense contending USF AF, USF SS, and Dosal are not an "agency" within the meaning of Chapter 119, Florida Statutes. The Court agrees with this legal contention.

⁶ The eleven Public Records Requests at issue in this case were introduced into evidence as Petitioner's Exhibit 54.

in his possession of or concerning me from July 2013 to present, to which [Petitioner] was not copied.”

With respect to PRRBNP No. 1, the Court first finds that the Internal Memorandum was not styled as a public records request under Chapter 119, but rather was submitted “[p]ursuant to the complaint [Petitioner] filed.” Be that as it may, the Court further finds that the testimony of Gerard Solis (“Solis”), USF’s General Counsel, revealed that USF could not produce the requested documents during the pendency of the internal investigation regarding Petitioner’s discrimination complaint. T. 11/2/18 p. 288; *see also* § 119.071(2)(g), (k), Fla. Stat. (2007). Petitioner’s PRR No. 4 came to Solis’ attention in March of 2015, after Petitioner had already filed a federal lawsuit against USF related to her discrimination claims. T. 11/2/18 p. 238-39, 286. Because Petitioner’s PRR No. 4 requested documents from July 2013 to “present,” Solis explained that the date of March 27, 2015, was used to define the term “present.” T. 11/2/18 p. 288-89. Based on that date range, a Charge Document for PRR No. 4 in the amount of \$4,726.00 was sent to Petitioner on April 22, 2015.⁷ USF Exhibit 13. Petitioner never paid the charges associated with PRR No. 4. T. 11/2/18 p. 291.

Solis further testified that during his deposition in September 2015, USF learned that Petitioner would accept the results of a keyword search of her name rather than requiring USF to undertake a search of all emails “concerning her.” T. 11/2/18 p. 291. Petitioner served as USF’s Registrar during the majority of the time period covered by the request. Thus, she likely would have been included or copied in a great number of emails (i.e., regarding students) totally unrelated to the reasons and purpose for which Petitioner was making the request. USF subsequently provided responsive emails to Petitioner on September 10, 2015. USF Exhibit 43. Given the forgoing, the Court finds that after receiving Petitioner’s PRR No. 4, USF presented Petitioner with a Charge Document which Petitioner needed to pay in order to obtain copies of the requested, responsive documents. However, Petitioner chose not to pay the charged amount. *See Fla. Agency for Health Care Admin. v. Zuckerman Spaeder, LLC*, 221 So.3d 1260, 1264 (Fla. 1st DCA 2017) (“A person who has not paid for the cost of production is not entitled to mandamus relief in a public records request.”). Sometime later, after learning that Petitioner would accept a narrowed, keyword search, USF produced such responsive documents. As such, the Court finds no unjustifiable delay by USF in producing the public records that were requested. *See Promenade D’Iberville, LLC v. Sundy*, 145 So. 3d 980, 983 (Fla. 1st DCA 2014) (“Unjustified delay in making non-exempt public records available violates Florida’s public records law.”) (emphasis in original). The Court finds Petitioner is not entitled to mandamus relief with respect to PRRBNP No. 1.

Public Records Requested But Not Provided No. 2

Public Records Requested But Not Provided No. 2 seeks “[a]ny and all documents (emails, letter, memoranda, etc.) from January 2014 to June 2015 that refer to Angela DeBose, the plaintiff in this action, in a derogatory manner, where derogatory means hurtful, harmful, offensive, degrading, insulting way.”

No evidence was presented that Petitioner ever made a public records request seeking the records articulated in PRRBNP No. 2. Further, there was no evidence presented that USF received any such request, or that such records even exist. Therefore, given the testimony and evidence

⁷ The Court notes that it already determined that amounts charged associated with Petitioner’s requests were reasonable. *See* January 11, 2019, order.

adduced at the evidentiary hearings, the Court finds that Petitioner has failed to meet her burden of proof regarding the documents requested in PRRBNP No. 2. *See O'Boyle v. Town of Gulf Stream*, 257 So. 3d 1036, 1040 (Fla. 4th DCA 2018) ("To set forth a cause of action under the Act, a party must 'prove they made a specific request for public records, the [state agency] received it, the requested public records exist, and the [state agency] improperly refused to produce them in a timely manner.'") (quoting *Grapski v. City of Alachua*, 31 So. 3d 193, 196 (Fla. 1st DCA 2010)). The Court finds Petitioner is not entitled to mandamus relief with respect to PRRBNP No. 2.

Public Records Requested But Not Provided No. 3

Public Records Requested But Not Provided No. 3 seeks "[a]ny and all documents (emails, letter, memoranda, etc.) from January 2014 to June 2015 that use racial/gender (i.e. racial or sexist insulting or disparaging language) or other slurs to refer to Angela DeBose, the plaintiff in this action."

No evidence was presented that Petitioner ever made a public records request seeking the records articulated in PRRBNP No. 3. Further, there was no evidence presented that USF received any such request, or that such records even exist. Therefore, given the testimony and evidence adduced at the evidentiary hearings, the Court finds that Petitioner has failed to meet her burden of proof regarding the documents requested in PRRBNP No. 3. *See O'Boyle*, 257 So. 3d at 1040. The Court finds Petitioner is not entitled to mandamus relief with respect to PRRBNP No. 3.

Public Records Requested But Not Provided No. 4

Public Records Requested But Not Provided No. 4 seeks "[a]ny and all documents (emails, letter, memoranda, etc.) from January 2014 to June 2015 that refer to the race-gender of Angela DeBose, the plaintiff in this action."

No evidence was presented that Petitioner ever made a public records request seeking the records articulated in PRRBNP No. 4. Further, there was no evidence presented that USF received any such request, or that such records even exist. Therefore, given the testimony and evidence adduced at the evidentiary hearings, the Court finds that Petitioner has failed to meet her burden of proof regarding the documents requested in PRRBNP No. 4. *See O'Boyle*, 257 So. 3d at 1040. The Court finds Petitioner is not entitled to mandamus relief with respect to PRRBNP No. 4.

Public Records Requested But Not Provided No. 15

Public Records Requested But Not Provided No. 15 seeks "[a]ny public records created, received, held, or maintained by USFBOT in which in [sic] Travis Thompson discusses working with Paul Dosal and/or Bob Sullins to get 'AD' fired. Provide emails referring to Plaintiff Angela DeBose in any case form (lower, upper, mixed case) as noted above item D – Definitions and Instructions in the possession, custody, or control of the USFBOT. Provide if 'fired,' 'removed,' 'eliminated,' or 'terminated' is used in this context. Provide emails if 'Paul' or 'Dosal' is used, whether or not others are also included in the copy."

PRRBNP No. 15 corresponds to PRR No. 3, which was an August 31, 2015, email from Petitioner to Solis with the subject "Travis Thompson Email." Petitioner's Exhibit 54. In the body of the email, Petitioner requests "specific email(s) from Travis Thompson that closely aligns to or matches the following description." Petitioner provided the following limiting description: "Statement from Travis Thompson wherein he states that he is working with Paul Dosal to get

'AD' fired." Petitioner additionally requested such responsive emails that contained certain keywords such as "Angela," "DeBose," "fired," "terminated," "Paul," and "Dosal," among other related terms. Finally, Petitioner stated that this email was a public records request.

No evidence was presented that the requested documents exist. Indeed, Solis testified that he informed Petitioner that USF had not found any documents responsive to this request. USF Exhibit 44; T. 4/3/19 p. 42-43. Therefore, given the testimony and evidence adduced at the evidentiary hearings, the Court finds that Petitioner has failed to meet her burden of proof in establishing that the records requested in PRRBNP No. 15 in fact exist. *See O'Boyle*, 257 So. 3d at 1040. The Court finds Petitioner is not entitled to mandamus relief with respect to PRRBNP No. 15.

Public Records Requested But Not Provided Nos. 16, 17, 18, and 19

Public Records Requested But Not Provided No. 16 seeks "Caurie Waddell's Exit Interview and related documents." PRRBNP No. 17 seeks "[a]ny and all documents received by USF Human Resources ('HR') from Paul Dosal to investigate Caurie Waddell's reasons for leaving USF." PRRBNP No. 18 seeks "[a]ny and all documents received or sent, to or from other parties (e.g. emails from Travis Thompson, Bob Sullins, Sara Thomas, or Paul Dosal, etc.) about Caurie Waddell or her departure from USF in 2014." PRRBNP No. 19 seeks "[a]ny reports or findings from HR to Paul Dosal and others concerning Caurie Waddell."

PRRBNP Nos. 16, 17, 18, and 19 correspond to two of Petitioner's public records requests. First, PRR No. 5 was an August 5, 2015, email from Petitioner to Solis with the subject "CHAPTER 119 – PUBLIC RECORDS REQUEST." In the body of that email, Petitioner sought the following:

Caurie Waddell's Exit Interview and Related documents, including any and all documents received by HR from Paul Dosal to investigate Caurie Waddell's reasons for leaving USF; any and all documents received from or pertaining to other parties, including emails from Travis Thompson, Bob Sullins, or Paul Dosal; and any reports or findings from HR to Paul Dosal, et al., concerning Caurie Waddell.

Petitioner's Exhibit 54. Second, PRR No. 1 was a June 15, 2015, email from Petitioner to Solis with the subject "CHAPTER 119 – PUBLIC RECORDS REQUEST." In the body of that email, Petitioner sought the following:

June 2014 email from Travis Thompson to Paul Dosal and Bub Sullins. The email concerns Caurie Waddell's reason for leaving USF. The email makes specific references to Angela DeBose. The existence of the email was first reported on June 12, 2014. Paul Dosal acknowledged existence of the email on June 23, 2014.

Petitioner's Exhibit 54.

Other than a Departmental Exit Process List, no evidence was presented that any other documents exist which are responsive to this request. USF Exhibit 52. The evidence established that on August 11, 2015, USF produced Caurie Waddell's entire personnel file to Petitioner, including the Departmental Exit Process List. USF Exhibit 23. With regard to email(s) from Travis

Thompson, Dosal testified that on June 23, 2014, Petitioner asked Dosal for a single email sent by Travis Thompson. T. 11/2/18 p. 78-79. Dosal testified that he told Petitioner such email did not exist. *Id.* Moreover, Dosal testified that he does not consider oral requests from co-workers to be the equivalent of a public records request. *Id.* Additionally, Solis testified that he received PRR No. 1 in mid-June 2015. T. 4/3/19 p. 43. No evidence was presented that the specific email requested in PRR No. 1 actually exists. Therefore, given the testimony and evidence adduced at the evidentiary hearings, the Court finds that Petitioner has failed to meet her burden of proof in establishing that the records requested in PRRBNP No. 16, 17, 18, and 19 in fact exist. *See O'Boyle*, 257 So. 3d at 1040. Moreover, the only document shown to exist that is responsive to this request was timely produced by USF. The Court finds Petitioner is not entitled to mandamus relief with respect to PRRBNP Nos. 16, 17, 18, and 19.

Public Records Requested But Not Provided No. 20

Public Records Requested But Not Provided No. 20 seeks “[r]ecords of any telephone calls made to Gerard Solis, or anyone else on his behalf, concerning Angela DeBose, from June 2014 to June 2015, including phone bills, long distance phone records, voice messages, emails, or electronic/hardcopy notes. This would include any comments, statements, discussion, or reports about Angela DeBose’s employment, retention, termination, discrimination, etc. This would include any typed, handwritten, recorded, etc. public records Gerard Solis created.”

PRRBNP No. 20 corresponds to PRR No. 6, which was an August 12, 2015, email from Petitioner to Solis with the subject “Telephone Records, etc.” Despite the characterization of PRRBNP No. 20, what PRR No. 6 actually requested was the following:

1. Records of any telephone calls made to you, or anyone else on your behalf, by Angela DeBose, in June 2014. Such records shall include, without limitation, phone bills, long distance phone records, voice messages, or notes or other documentation of any aspect such as telephone calls. Additionally, provide the date, time, and length of any and all calls, hang-ups, disconnects, etc. and the actual unmanipulated voice recordings left on your answering service.
2. Records of any telephone calls made by you, or anyone else on your behalf, to Angela DeBose, in June 2014. Such records shall include, without limitation, phone bills, long distance phone records, voice messages, or notes or other documentation of any aspect such as telephone calls. Additionally, provide the date, time, and length of any and all calls, hang-ups, disconnects, etc. and the actual unmanipulated voice recordings left on your answering service.
3. Any and all original notes you made, whether typed, handwritten, records, etc., concerning your June 2014 phone discussions with Angela DeBose.

Petitioner Exhibit 54. Petitioner further stated that the request was “[i]n follow-up to the hearing,” and requested that “please provide or bring with you the following for the 8/14 deposition.” *Id.* The Court initially questions whether this was a valid public records request or a deposition duces tecum request. However, that issue aside, the Court finds that even if this were a valid public

records request, no evidence was presented that responsive records exist or that if such records exist, that USF refused to produce such records. Therefore, the Court finds that Petitioner has failed to meet her burden of proof regarding the documents requested in PRRBNP No. 20. *See O'Boyle*, 257 So. 3d at 1040. The Court finds Petitioner is not entitled to mandamus relief with respect to PRRBNP No. 20.

Public Records Requested But Not Provided No. 22

Public Records Requested But Not Provided No. 22 seeks "Public Records Request to Brian Allman, USF Human Resources, for termination data by race/ethnicity and gender." PRRBNP No. 22 corresponds to PRR No. 9, which was an August 18, 2014, email from Petitioner to Brian Allman ("Allman") with the subject "RE: Data Request." Petitioner Exhibit 54. In this request, Petitioner sought enumerated categories of "termination data" which related to the reasons for the ending of USF Academic Affairs and Student Success employee's employment. In response to PRR No. 9, Allman searched the GEMs system which stores Human Resources data at USF. T. 11/2/19 p. 199. Allman testified that while the GEMs system has data fields which display whether an employee was terminated or resigned, it does not show whether an employee was provided severance pay in connection with their separation from USF. *Id.* Information regarding separation agreements is not customarily maintained in personnel files. *Id.* at 284. Nor is there a software code that would indicate whether or not someone resigned voluntarily or were asked to resign. *Id.* at 200. Allman confirmed that there was no way to readily pull data regarding the reason for an employee's retirement. *Id.* Solis confirmed that significant portions of the information requested in PRR No. 9 would have to be created. *Id.* at 293-94. For instance, Allman confirmed that a case by case assessment would have to occur whereby someone would go from department to department to interview people to find out the cause for resignation or retirement. *Id.* at 144.

On October 7, 2014, USF sent Petitioner the available, responsive data, but informed her that the remainder of the request would require the creation of new data and require extensive use of information technology and clerical services. USF Exhibit 12. On March 27, 2015, Petitioner was provided with a Charge Document in the amount of \$1,206.80 related to the records requested in PRR No. 9. USF Exhibit 12; T. 4/3/19 p. 16-17. No evidence was presented demonstrating that Petitioner ever paid the amount required in the Charge Document.

Given the testimony and evidence adduced at the evidentiary hearings, the Court finds that USF timely produced responsive documents that were in existence. No legal authority has been presented which would require USF to *create* responsive documents. Moreover, Petitioner failed to pay the amount USF requested to undertake the creation of documents which may have provided responsive information. Therefore, Petitioner failed to meet her burden of proof regarding the records requested in PRRBNP No. 22. *See O'Boyle*, 257 So. 3d at 1040. The Court finds Petitioner is not entitled to mandamus relief with respect to PRRBNP No. 22.

Public Records Requested But Not Provided No. 23

Public Records Requested But Not Provided No. 23 seeks "Public Records Request to Gerard Solis and Lori Mohn, USFBOT Office of the General Counsel, for Ellucian, L.P. USFBOT provided documents related to the Ellucian Agreement, without the public records statement and without the names of the parties signing/executing agreement." PRRBNP No. 23 corresponds to PRR No. 11, which was a September 21, 2015, email from Petitioner to Solis and Lori Mohn with the subject "Public Records Request." In the body of that email, Petitioner requested "a complete copy of the Ellucian Consulting Services Agreement with USF, pursuant to Andrea Diamond's

visit it [sic] April 2015.” Petitioner further requested “Andrea Diamond’s meeting schedule during the visit, as coordinated by Carrie Garcia.” Finally, Petitioner requested “any and all emails that went out from Paul Dosal or other members of the DegreeWorks Steering Committee concerning the Ellucian DegreeWorks Post-Implementation Report.” Petitioner Exhibit 54.

The testimony of Solis established that he interpreted PRR No. 11 as seeking documents related to the engagement of Andrea Diamond in April 2015, and not to *all* Ellucian contracts with USF. T. 11/2/19 p. 271-72. On October 1, 2015, USF produced the scope document and the contracting document for the post-assessment review. *Id.* at 272. USF provided a second production of responsive records to Petitioner on October 29, 2015. *Id.* at 283-84; T. 5/21/19 at 34-35.

The Court notes that PRR No. 11 was not part of Petitioner’s original petition for writ of mandamus, but rather was included in Petitioner’s Second Amended Petition. Given the testimony and evidence adduced at the evidentiary hearings, the Court finds that Petitioner’s request in PRR No. 11 was a narrower request than that presented in PRRBNP No. 23. The Court further finds that USF timely responded to the narrower PRR No. 11. Therefore, Petitioner failed to meet her burden of proof regarding the records requested in PRRBNP No. 23. *See O’Boyle*, 257 So. 3d at 1040. The Court finds Petitioner is not entitled to mandamus relief with respect to PRRBNP No. 23.

Additional Public Records Request

On July 23, 2015, Petitioner requested the “current or most recent address on record for the USF current/former employees, agents, assigns, etc.” Petitioner Exhibit 54. On August 3, 2015, Petitioner requested “the last known address of record for Tonia Suber, Bea Smith, Jennifer Derushia, and Caurie Waddell.” Petitioner Exhibit 54. After Petitioner narrowed her request, USF produced the requested, narrowed information on August 5, 2015. Petitioner Exhibit 90. Therefore, although neither of these requests were included in Petitioner’s *Notice of Filing of the Amended List of Public Records Requested But Responses Not Provided*, the Court finds that USF produced the requested documents in a timely manner. Accordingly, Petitioner failed to meet her burden of proof regarding these two additional requests. *See O’Boyle*, 257 So. 3d at 1040. The Court finds Petitioner is not entitled to mandamus relief with respect to these additional public records requests.

Conclusions of Law

A petition for writ of mandamus seeks to remedy a government’s failure to do something it is required by law to do by obtaining a court order commanding such action of the government. To obtain a writ of mandamus, a petitioner must establish the following:

- (1) the petitioner has a clear and certain legal right
- (2) to the performance of a particular duty
- (3) by a government or a representative of the government
- (4) whose performance of that duty is ministerial and not discretionary,
- (5) who has failed to perform despite an adequate request, and
- (6) who has left the petitioner with no other legal method for obtaining relief.

21 Fla. Prac., § 1701:1 (2019-20 ed.); *see also Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000). As noted above, to establish a cause of action under the Public Records Act, the litigant must “prove they made a specific request for public records, the [state agency] received it, the requested public records exist, and the [state agency] improperly refused to produce them in a timely manner.” *O’Boyle*, 257 So. 3d at 1040. A writ of mandamus with respect to a public records request will not issue where it is not shown that the requested document(s) actually exist. *See Skeen v. D’Alessandro*, 681 So. 2d 712, 713 (Fla. 2d DCA 1995) (citing *State ex rel. Ostroff v. Pearson*, 61 So. 2d 325, 326 (Fla. 1952) (holding that writ will not issue when evidence showed papers no longer existed)). A writ of mandamus is similarly not warranted where the issue has become moot, for example, where the state agency has provided the responsive documents. *See generally Huebner v. Huebner*, 93 So. 3d 470, 471 (Fla. 2d DCA 2012).

The Court concludes that Petitioner has failed to meet her burden of proving that she made specific requests for public records, that USF received each of those requests, that each of those requested records actually exist, and that USF improperly refused to produce such records in a timely manner. As outlined above, the evidence established that the requested public records either did not exist, or where such did exist, that they were provided in a timely manner under the circumstances. *See Citizens Awareness Found., Inc. v. Wantman Group, Inc.*, 195 So. 3d 396, 399 (Fla. 4th DCA 2016) (“Where delay is at issue, as here, the court must determine whether the delay was justified under the facts of the particular case.”) (quoting *Lilker v. Suwannee Valley Transit Auth.*, 133 So. 3d 654, 655 (Fla. 1st DCA 2014)). This is particularly true where, as here, some of the requests became moving targets, morphing over the course of this litigation. Having considered all of the testimony and evidence presented at each of the evidentiary hearings in this matter, the Court concludes that Petitioner has failed to establish entitlement to a writ of mandamus.

Petitioner’s Attorney’s Fees Request

With regard to Petitioner’s request for attorney’s fees, section 119.12(1), Florida Statutes, provides as follows:

- (1) If a civil action is filed against an agency to enforce the provisions of this chapter, the court shall assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency ***if the court determines that:***
 - (a) The agency unlawfully refused to permit a public record to be inspected or copied; and
 - (b) The complainant provided written notice identifying the public record request to the agency’s custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (2). The notice period begins on the day the written notice of the request is received by the custodian of public records, excluding Saturday, Sunday, and legal holidays, and runs until 5 business days have elapsed.

§ 119.12(1), Fla. Stat. (2017) (emphasis added). It is only under these certain conditions that section 119.12 “permits the award of attorney’s fees to a ***prevailing*** litigant who has filed a civil action against an agency to enforce the provisions of Florida’s public records law.” *Office of State Attorney v. Gonzalez*, 953 So. 2d 759, 762-63 (Fla. 2d DCA 2007) (emphasis added). The Court concludes that Petitioner is not entitled to attorney’s fees because she failed to prove that USF unlawfully refused to permit a public record to be inspected or copied. Petitioner failed to meet

her burden of proof with respect to each of her claims against USF. Therefore, she is not entitled to an award of costs or fees in this matter. Moreover, Petitioner has represented herself throughout the majority of this action, and certainly for the entirety of the multiple evidentiary hearings. Petitioner, who is not a licensed Florida Bar attorney, is not entitled to attorney's fees for representing herself. Consequently, Petitioner's request for attorney's fees is denied.

Any and All Other Pending Motions

Any and all other pending motions for which a separate hearing was not held or for which a separate order was not entered are deemed denied by entry of this *final* order.⁸

Accordingly, it hereby is **ORDERED** as follows:

1. Petitioner's Second Amended Petition is **DENIED**, in part, as to Petitioner's Public Records Requested But Not Provided Numbers 1, 2, 3, 4, 15, 16, 17, 18, 19, 20, 22, and 23. Having decided herein the remaining disputed issues in this case according to the procedure set forth in the Court's August 16, 2018, *Order Continuing Evidentiary Hearing*, the Court enters this *Final Order Denying Second Amended Petition for Writ of Mandamus* as the *final* order in this case.
2. The Court reserves jurisdiction to enter any other or additional orders or judgments that may be necessary or appropriate, including an order or judgment awarding prevailing party attorneys' fees and/or costs.

DONE AND ORDERED: January 17, 2020.


ELIZABETH G. RICE
Circuit Court Judge

cc Conformed copies furnished by U.S. Mail to:

- ✓ Angela DeBose, pro se
- ✓ Richard C. McCrea, Jr., Esq.
- ✓ Cayla Page, Esq.

⁸ The Court notes that in her December 9, 2019, *Motion for Extension of Time*, Petitioner additionally argued that a pending motion for partial summary judgment had not yet been heard, required a hearing, and somehow prevented the Court from entering an order on the final evidentiary hearing in this matter. In its December 11, 2019, order denying Petitioner's request, the Court explained that separate hearing time would not be provided with respect to Petitioner's motion for partial summary judgment as the time for a separate hearing on that matter had passed. Moreover, a separate hearing on the motion for partial summary judgment was simply not necessary where a final evidentiary hearing had been held and the Court had already heard all the evidence that could or would be presented in this matter. Essentially, any "pending" motion for summary judgment was subsumed in the final evidentiary hearing. Petitioner also filed *Petitioner's Motion to Modify Order* on December 11, 2019. The Court finds a separate hearing on this motion likewise is not required, and it too is denied by the entry of this final order.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

| | | |
|-----------------------------|---|-------------------|
| ANGELA DeBOSE, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | Case No. 2D20-594 |
| |) | |
| UNIVERSITY OF SOUTH FLORIDA |) | |
| BOARD OF TRUSTEES, |) | |
| |) | |
| Appellee. |) | |
| <hr/> | | |

Opinion filed March 10, 2021.

Appeal from the Circuit Court for
Hillsborough County; Elizabeth G. Rice,
Judge.

Angela DeBose, pro se.

Richard C. McCrea, Jr., and Cayla McCrea
Page of Greenberg Traurig, P.A.,
Attorneys for Appellee.

PER CURIAM.

Affirmed.

LaROSE, ROTHSTEIN-YOUAKIM, and STARGEL, JJ., Concur.

~~IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA~~
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

April 21, 2021

CASE NO.: 2D20-0594

L.T. No.: 15-CA-5663

ANGELA DE BOSE

v.

UNIVERSITY OF SOUTH FLORIDA
BOARD OF TRUSTEES

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for rehearing, rehearing en banc, written opinion, clarification, and certification of important question to the Florida Supreme Court is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

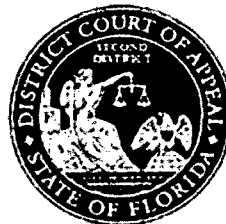
CAYLA MC CREA PAGE, ESQ.
ANGELA DE BOSE

RICHARD C. MC CREA, JR., ESQ.
CINDY STUART, CLERK

mep

Mary Elizabeth Kuenzel

Mary Elizabeth Kuenzel
Clerk



**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

ANGELA DEBOSE,

Plaintiff/Petitioner,

v.

CASE NO. 15-CA-005663
DIVISION: C

USF BOARD OF TRUSTEES,
USF ACADEMIC AFFAIRS OF USF,
STUDENT SUCCESS OF USF, and
PAUL DOSAL,

Defendants/Respondents.

ORDER DENYING SECOND AMENDED PETITION, IN PART

THIS CASE came before the Court for an evidentiary hearing on October 9, 2018, on Petitioner's Second Amended Petition for Writ of Mandamus and for Violation of the Florida Public Records Law and Relief Pursuant to Article 1, Section 24 of the Florida Constitution and Chapter 119 and Chapter 86 ("Second Amended Petition") as to the bifurcated issue of the reasonableness of charges for producing documents in response to various public records requests made by the petitioner, Angela DeBose ("DeBose"), to respondents, USF Board of Trustees, USF Academic Affairs of USF, Student Success of USF (the USF entities will be referred to hereinafter collectively as "USF"), and Paul Dosal ("Dosal").

The Court has considered the Second Amended Petition, together with the relevant portions of the court file; has reviewed the parties' written submissions in support of and in response to the Second Amended Petition as it relates to the issue of the reasonableness of USF's charges in producing requested documents; has reviewed the testimonial and documentary evidence presented by the parties; has had the opportunity to observe the demeanor of each witness and assess each witness' credibility; and has considered the applicable statutory and case law and rules

of procedure. Based on the foregoing, the Court makes the findings of fact and conclusions of law more particularly set forth below.

FINDINGS OF FACT

Bifurcated Final Evidentiary Hearing

1. On August 16, 2018, the Court entered its Order Continuing Evidentiary Hearing, which set the issues for hearing at the October 9, 2018, evidentiary hearing as follows: “The Court will conduct an evidentiary hearing to address the reasonableness of fees charged in response to Petitioner's Public Records Request Nos. 5-14 and 21, as delineated in Petitioner's Amended List of Public Records Requested but Not Provided by Respondent University of South Florida Board of Trustees, filed on April 9, 2018.”

USF Subject to Public Records Act

2. USF is a state agency and is therefore subject to Chapter 119, *Florida Statutes*. [10/09/18 Evidentiary Hearing Transcript, Gerard Solis (“Solis”) 27:22-25]

USF Public Records Request Policies and Procedures

3. Solis has been employed with USF since 2003. [10/09/18 Evidentiary Hearing Transcript, Solis 114:13] He has been continuously involved with responding and assisting in responding to public records request throughout his employment with USF and is familiar with the procedure USF follows with respect to responding to a public records request. [10/09/18 Evidentiary Hearing Transcript, Solis 114:16-24] He likewise is familiar with USF’s policies in responding to public records requests. [10/09/18 Evidentiary Hearing Transcript, Solis 122-123;24-25; 1-2]

4. USF’s practice and policy when a Public Records Act request (“PRR”) is received is to first, have “[t]he custodian of the record make an initial determination about whether an exemption applies. The threshold determination is do they have the record and whether an

exception would apply.” [10/09/18 Evidentiary Hearing Transcript, Solis 115:3-6] Next, the custodian would have to make some analysis as to the volume of responsive documents. [10/09/18 Evidentiary Hearing Transcript, Solis 115:7-13] If the volume is significant, then USF would likely prepare a charge document of estimated charges. [*Id.*] Large requests, nine out of 10 times, involve requests for emails. [*Id.*] Next, USF must determine whether a public records exemption applies to any of the requested documents. [10/09/18 Evidentiary Hearing Transcript, Solis 116:5-13] There are several exemptions that would apply for the types of documents in USF’s possession. [10/09/18 Evidentiary Hearing Transcript, Solis 116-117:5-25; 1-7] Once the universe of documents has been determined, USF typically would review them and determine whether any exemptions apply. [10/09/18 Evidentiary Hearing Transcript, Solis 118:8-10] These practices are the standardized practices for all PRR’s coming through the general counsel’s office. [10/09/18 Evidentiary Hearing Transcript, Solis 118:11-14]

5. USF recently revised its policy on responding to public records requests and defined “extensive” clerical and information technology (“IT”) time as beginning “after 15 minutes of staff time,” to clarify prior policy. [10/09/18 Evidentiary Hearing Transcript, Solis 97:15-16]

6. To estimate the time necessary to review documents for exemptions or privileged information, USF uses a standard formula for all public records requests. [10/09/18 Evidentiary Hearing Transcript, Lori Mohn-McNenney (“Mohn”) 173:4; 7-8] USF did not develop the formula; rather, it was taken from the cost recovery policy posted on the Governor’s website. [10/09/18 Evidentiary Hearing Transcript, Mohn 173-174:10-11; 13-14; 24-25; 1-2]

7. The formula for calculating the labor cost is as follows: The number of emails¹ is multiplied by 60 seconds per email in order to get the total number of seconds that it would take

¹ The number of emails reflected in the Charge Document does not take into account the amount of pages per email, which can far exceed the raw number of emails pulled from each custodian’s email by IT.

to complete review of the emails for redactions. Next, the number of seconds is divided by 60 in order to get the total number of minutes the review would require. ~~The number of minutes is again~~ divided by 60 in order to get the total number of hours the review would require. Finally, the hour figure is multiplied by the lowest hourly rate, not including benefits, of the clerical employee reviewing the documents. [10/09/18 Evidentiary Hearing Transcript, Mohn 189-190:24-25; 1-6 and Defendant's Exhibit No. 35]

8. As some emails take five seconds to review and some take five minutes, it has been USF's long-standing practice and the practice of the general counsel's office to use 60 seconds per email as an estimate for the length of time needed to review an email. [10/09/18 Evidentiary Hearing Transcript, Solis 128-129:19-23; 1] The 60-second estimate is always used, not just for PRR's from DeBose. [10/09/18 Evidentiary Hearing Transcript, Solis 128-129:24-25; 1]

9. The Florida Governor's website allows for salary and benefits to be included in the hourly rate of the clerical worker performing the labor associated with responding to the public records request. [10/09/18 Evidentiary Hearing Transcript, Mohn 194:3-11] USF, however, does not include benefits in the hourly rate of its clerical worker in response to public records requests, and General Counsel's Office did not include benefits in the hourly rate charged in *any* of the estimates provided to DeBose that are the subject of this case. [*Id.*]

10. The review and redaction of each public records request, including the requests that are the subject of this case, are performed manually. "[E]very single file would have to be reviewed for exemption information" by paralegals and other legal assistants in the General Counsel's Office. [10/09/18 Evidentiary Hearing Transcript, Mohn 179: 10-16] USF General Counsel's Office does not have redaction software. [*Id.*] For a redaction software to have the capability to redact student information, all current and former students' names and information

would have to be inputted into a system. [10/09/18 Evidentiary Hearing Transcript, Solis 135-136: 24-25; 1-2]

11. The review and redaction of public records requests typically takes “more time” than the time estimate reflected in charge documents. [10/09/18 Evidentiary Hearing Transcript, Mohn 195:23] USF, however, does not subsequently send a revised charge document reflecting the additional time expended. [10/09/18 Evidentiary Hearing Transcript, Mohn 194:1-4]

12. USF has provided refunds when the estimated cost reflected in the charge documents exceeds the actual labor/clerical cost. [10/09/18 Evidentiary Hearing Transcript, Solis 107-108: 23-25; 1-3]

13. The General Counsel’s Office has never included Solis’ hourly rate in calculating DeBose’s request estimations, even when Solis performed a secondary review of documents requested. Because Mohn’s hourly rate is lower, USF uses her hourly rate in determining the hourly rate associated with the review. [10/09/18 Evidentiary Hearing Transcript, Solis 50:11-12]

14. The formula for calculating the IT costs is as follows: The hours estimated multiplied by the hourly rate of the IT employee. [10/09/18 Evidentiary Hearing Transcript, Mohn 189-190:24-25; 1-6 and Defendant’s Exhibit No. 35]

15. USF only charges for IT or clerical time if the request is extensive. If not, USF would apply the standard fee of \$0.15 to \$0.20 provided for in Chapter 119(4)(a)(1) and (2), *Florida Statutes*, for *copies* of documents. The \$0.15 to \$0.20 fee is only for copies and “has nothing to do with the review and redaction of emails.” [10/09/18 Evidentiary Hearing Transcript, Mohn 193:11-14]

16. USF requires advance payment for public records requests that require extensive IT or clerical support, evidenced by the production of a charge document to the requestor. [10/09/18 Evidentiary Hearing Transcript, Solis 31:9-10]

17. USF now requires advance payment for IT to perform a requestor's search, rather than performing the IT search and recouping the money later. ~~USF "always did it the same way,~~ but [USF] used to let requestors basically get away with having the search done before they paid. And then [General Counsel's Office] would end up eating the cost or IT would end up eating the cost. So now [General Counsel's Office has] ... the requestor pay for IT search. And then once the requestor pays for the search, [General Counsel's Office has] IT do the search." [10/09/18 Evidentiary Hearing Transcript, Mohn 175:12-18]

18. USF did not treat DeBose's requests any differently than any other public records request and "the charges and processes for charges ... [have] been applied consistently regardless of who makes the request." [10/09/18 Evidentiary Hearing Transcript, Solis 124:16-23] There is no difference between the way that the costs are calculated for DeBose and anyone else. [10/09/18 Evidentiary Hearing Transcript, Solis 125:14-18] Anyone who makes a public records request to USF is required to pay an estimated charge. [10/09/18 Evidentiary Hearing Transcript, Solis 125:8-13]

19. USF has never withheld or failed to provide responses to DeBose's requests for public records, unless DeBose failed to pay the costs of extensive clerical or IT use/labor associated with her requests. [10/09/18 Evidentiary Hearing Transcript, Solis 32-33:24-25; 1-8; Mohn 186:13-17]

20. The Court finds credible the testimony of Solis and Mohn as it relates to USF's policies and procedures in handling Public Records Act requests.

Public Records Requests, Searches, and Responses at Issue

21. DeBose was the Registrar of USF until May of 2015. [Defendant's Exhibit No. 32] Since approximately 2015, USF has "received many requests from the Petitioner... [S]ometimes

[USF] has identified exemptions. Other times [USF] [has] provided charges. Other times [USF] has produced documents” to DeBose. [10/09/18 Evidentiary Hearing Transcript, Solis 28:6-9]

22. **August 12, 2015, PRR** - On August 12, 2015, months after DeBose’s termination in May of 2015, DeBose sent an email to Kofi Glover (“Glover”), Vice President for HR & Space Planning, and Mike Beedy (“Beedy”) of the HR Department, renewing an apparent verbal request for “all of [DeBose’s] email files and all of [DeBose’s] computer files on disk or thumb drive.” [Defendant’s Exhibit No. 32] DeBose indicated that she had made this request at the May 19, 2015, meeting when she was informed that her contract with USF was being non-renewed. [Id.] Glover informed DeBose in a reply email that she made no such request during the meeting, but if she wished, she could renew that request. [Id.]

23. **August 16, 2015, PRR** - On August 16, 2015, DeBose sent a public records request, pursuant to Chapter 119, *Florida Statutes*, by email to Solis, then Associate General Counsel, copying his administrative specialist/paralegal, Mohn. [Defendant’s Exhibit No. 28] DeBose requested “email and other similar electronic records that contain the name ‘DeBose’” in the possession of President Judy Genshaft, Provost Ralph Wilcox, Sydney Fernandes, Robert Sullins, Travis Thompson, Carrie Garcia, Sarah Thomas, Glover, Beedy, and Alexis Mootoo. [Id.]

24. **August 31, 2015, PRR** - Thereafter, on August 31, 2015, DeBose sent a public records request to Solis and Mohn requesting “email(s) from Travis Thompson that closely aligns to or matches the following description. Statement from Travis Thompson where he states that he is working with Paul Dosal to get “AD” fired. Provide emails if “Angela”, “DeBose”, “Angela DeBose”, “the Registrar” are used also or instead in this context. Provide emails if “fired,” “termination,” removed,” “eliminated,” etc. are used in this context. Provide emails if “Paul”, “Dosal”, is used. Provide whether or not others are included or copied in the email (e.g. Bob Sullins, advisors, etc.).” [Defendant’s Exhibit No. 39]

USF's Charges and Charge Documents

~~25. Charge Document #1 - On August 20, 2015, approximately eight days after~~
DeBose made her public records request to Glover, Mohn provided DeBose a “University of South Florida Public Records Charge Document” (“Charge Document #1”) [Defendant’s Exhibit No. 32] Charge Document #1 reflects an estimate of the “extensive use of IT resources, file retrieval, queries, etc.” and of the labor cost, which included “extensive clerical and/or supervisory labor” in the review and redaction required for the production of DeBose’s 27,623 emails revealed by IT’s search. [*Id.*] Specifically, Charge Document #1 reflects it would require Mohn 460.38 hours to review all 27,623 of DeBose’s emails. [*Id.*] As the former Registrar for USF, DeBose had “high clearance with USF” to review documents that contained student information and other information subject to redaction/exemption laws. [10/09/18 Evidentiary Hearing Transcript, Solis 53:21-23] Because DeBose was in a unique position as the University Registrar, DeBose had substantially more access to student information and it was likely that such student information would be included in her emails. As a result, the review of her emails and files requires a more thorough review and redaction process to ensure that information is not disclosed in violation of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (“FERPA”). [10/09/18 Evidentiary Hearing Transcript, Solis 45:5-8] The review and redaction time of DeBose’s 27,623 emails, using the formula provided by the Florida Governor’s website, was estimated at \$9,083.29. [10/09/18 Evidentiary Hearing Transcript, Mohn 173-174:25; 1-2]

26. After her receipt of Charge Document #1, DeBose inquired whether she could inspect her own records, supervised by a USF employee. [10/09/18 Evidentiary Hearing Transcript Solis 44:24-25] Solis informed DeBose in response that “USF is obligated to complete the appropriate redactions prior to production. Unauthorized disclosures would occur upon your review of non-redacted records, which would not be cured by verification afterwards.” [Plaintiff’s

Exhibit No. 31; 10/09/18 Evidentiary Hearing Transcript, Solis 45:5-7] The disclosures would be unauthorized because once DeBose's contract with USF was non-renewed, DeBose's "ability to have access and be authorized to see things that were in the registrar with a very high clearance was no longer valid." [10/09/18 Evidentiary Hearing Transcript, Solis 57:3-6] USF accordingly declined DeBose's request to "preview" her emails as a means by which to reduce the number of emails subject to Mohn's review and to reduce the review and redaction cost.

27. DeBose has failed to pay USF in advance the \$9,083.29 estimated cost for the production of documents reflected in Charge Document #1. USF, consistent with its standard policy and procedure, has refused to provide DeBose the requested documents. [10/09/18 Evidentiary Hearing Transcript, Solis 129:16-18]

28. **Charge Document #2** - On August 25, 2015, approximately nine days after DeBose made her public records request to Solis, Mohn responded to DeBose's request with a "University of South Florida Public Records Charge Document" ("Charge Document #2") which provided DeBose a cost estimate for her request for President Genshaft's and Provost Wilcox's emails. Charge Document #2 reflects an estimate of the "extensive use of IT resources, file retrieval, queries, etc." and of the labor cost, which included "extensive clerical and/or supervisory labor" in the review and redaction required for the production of President Genshaft's and Provost Wilcox's emails.² [Defendant's Exhibit No. 35] A search by IT of President Genshaft's email returned 232 relevant emails. [*Id.*] A search by IT of Provost Wilcox's email returned 920 relevant emails. [*Id.*] The IT estimate for President Genshaft's and Provost Wilcox's emails is \$49.82. [*Id.*] The labor estimate for President Genshaft's email is \$76.28³, and the labor estimate for Provost

² The date cited in the body of Defendant's Ex. No. 35 is a typo. The charge document was issued in response to DeBose's August 16, 2015, public records request, as indicated by the subject of the charge and by the name of the attached document "Angela DeBose - Charge Document re 08/16/15 PRR re. emails referencing Angela DeBose (00090733xBF0F1).pdf." [Defendant's Ex. No. 35]

³ 232 emails x 60 seconds per email = 13,920 seconds ÷ 60 = 232 minutes ÷ 60 = 3.86 hours x \$19.73 (Lori Mohn hourly rate) = \$76.28

Wilcox's emails is \$302.52.⁴ [*Id.*] The "Total Estimated Cost" provided to DeBose in response to her August 16, 2015, PRR, with respect to President Genshaft and Provost Wilcox, is \$428.62. [*Id.*]

29. DeBose has failed to pay USF in advance the \$428.62 estimated cost for the production of documents reflected in Charge Document #2. USF, consistent with its standard policy and procedure, has refused to provide DeBose the requested documents.

30. **Charge Document #3** - On August 26, 2015, approximately 10 days after DeBose made her public records request, Mohn emailed a "University of South Florida Public Records Charge Document" ("Charge Document #3") to DeBose with an estimate for the remainder of her August 16, 2015, PRR. [Defendant's Exhibit No. 36] Charge Document #3 reflects an estimate of the "extensive use of IT resources, file retrieval, queries, etc." and of the labor cost, which included "extensive clerical and/or supervisory labor" in the review and redaction required for the production of the emails of Sydney Fernandes, Robert Sullins, Travis Thompson, Carrie Garcia, Sarah Thomas, Glover, Beedy, and Alexis Mootoo. Charge Document #3 includes, among other information, an itemization of the number of emails recovered and the costs associated in researching, reviewing, and producing the requested information.

31. A search by IT of Sidney Fernandes's email returned 282 relevant emails. [*Id.*] Using the standard formula described in Paragraph No. 7 above, the labor cost for review and redaction of Sidney Fernandes's 282 emails was \$92.73. [*Id.*]

32. A search by IT of Robert Sullin's email returned 1,060 relevant emails. [*Id.*] Using the standard formula described in Paragraph No. 7 above, the labor cost for review and redaction of Robert Sullin's 1,060 emails was \$348.56. [*Id.*]

⁴ 920 emails x 60 seconds per email = 55,200 seconds ÷ 60 = 920 minutes ÷ 60 = 15.33 hours x \$19.73 (Lori Mohn hourly rate) = \$76.28

33. A search by IT of Travis Thompson's email returned 2,606 relevant emails. [*Id.*]

Using the standard formula described in Paragraph No. 7 above, the labor cost for review and redaction of Travis Thompson's 2,606 emails was \$856.93. [*Id.*]

34. A search by IT of Carrie Garcia's email returned 189 relevant emails. [*Id.*] Using the standard formula described in Paragraph No. 7 above, the labor cost for review and redaction of Carrie Garcia's 189 emails was \$62.14. [*Id.*]

35. A search by IT of Sarah Thomas's email returned 359 relevant emails. [*Id.*] Using the standard formula described in Paragraph No. 7 above, the labor cost for review and redaction of Sarah Thomas's 359 emails was \$118.05. [*Id.*]

36. A search by IT of Glover's email returned 178 relevant emails. [*Id.*] Using the standard formula described in Paragraph No. 7 above, the labor cost for review and redaction of Glover's 178 emails was \$58.53. [*Id.*]

37. A search by IT of Beedy's email returned 219 relevant emails. [*Id.*] Using the standard formula described in Paragraph No. 7 above, the labor cost for review and redaction of Beedy's 219 emails was \$72.01. [*Id.*]

38. A search by IT of Alexis Mootoo's email returned 949 relevant emails. [*Id.*] Using the standard formula described in Paragraph No. 7 above, the labor cost for review and redaction of Alexis Mootoo's 949 emails was \$312.06. [*Id.*]

39. In addition to the labor estimate, an IT estimate was also applied to each of the searches. A USF Health IT employee estimated that it took two hours to complete the search of all of the above-listed custodians. [*Id.*] The USF Health IT employee's hourly rate (\$45.49) was multiplied by two hours for a total IT cost estimate of \$90.98. [*Id.*]

40. The same formula was applied to each custodian listed in the Charge Document to determine the estimation of labor costs, which includes the review and redaction of documents.

[*Id.*] The total labor cost for review and redaction, plus the cost of IT use, of 5,296 emails reflected in Charge Document #3 was \$2,011.99. [*Id.*]

41. DeBose has failed to pay USF in advance the \$2,011.99 estimated cost for the production of documents reflected in Charge Document #3. USF, consistent with its standard policy and procedure, has refused to provide DeBose the requested documents.

42. **Charge Document #4** – In response to her August 31, 2015, PRR, Mohn provided DeBose a “University of South Florida Public Records Charge Document” (“Charge Document #4”). [Plaintiff’s Exhibit No. 32] Charge Document #4 reflects an estimate of the “extensive use of IT resources, file retrieval, queries, etc.” and of the labor cost, including “extensive clerical and/or supervisory labor” in the review and redaction required for the production of Travis Thompson’s emails. A search by IT of DeBose’s August 31, 2015, PRR returned 15,824 emails. [10/09/18 Evidentiary Hearing Transcript, Solis 91-92:8-25; 1-12] The total cost estimate for the August 31, 2015, PRR was \$5,203.39⁵ for labor/clerical review and redaction of documents.

43. Debose has failed to pay USF in advance the \$5,203.99 cost estimate for the production of documents reflected in Charge Document #4. USF, consistent with its standard policy and procedure, has refused to provide DeBose the requested documents.

44. The Court finds that competent substantial evidence has been presented by USF to demonstrate its policies and procedures regarding Public Records Act requests and the uniform application of its policies and procedures as to all PRR’s made to USF.

45. The Court further finds that competent substantial evidence supports the number of emails identified by USF’s IT department and no credible evidence was presented to challenge the accuracy of the number of emails identified.

⁵ 15,824 emails x 60 seconds per email = 949,440 seconds ÷ 60 = 15,824 minutes ÷ 60 = 263.73 hours x \$19.73 (Lori Mohn hourly rate) = \$5,203.39.

46. While DeBose challenged the accuracy of the number of emails identified in Charge Document #4 and claimed they were not proportionate to the search request, it appears a reasonable explanation exists for the increased number of documents generated by the request. It appears from Charge Document #4 that USF's IT department generated an entirely new search based on the additional search terms provided by DeBose in her August 31, 2015, PRR, rather than using the additional terms provided to perform a "refined" search on the initial 2,606 emails previously disclosed for Travis Thompson in Charge Document #3.

47. As the August 31, 2015, PRR failed to expressly request a "refined" search of the 2,606 emails previously disclosed, it is understandable how USF would conduct a new search using the different narrations of DeBose's name and 10 search terms and how this new search would result in an increased number of emails. [Defendant's Exhibit No. 28] Charge Document #4 accordingly reflected a higher cost estimation for Travis Thompson's emails than Charge Document #3.

CONCLUSIONS OF LAW

Applicable Law and Analysis.

1. While USF is required to comply with Chapter 119, *Florida Statutes*, it also has a legal duty to redact any exempt portions of public records before they are released. *See Morris Publ'g Grp., LLC v. State of Fla.*, 154 So. 3d 528, 533 (Fla. 1st DCA 2015); *Fla. Agency for Health Care Admin. v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260 (Fla. 1st DCA 2017).

2. There are several categories of information that are exempt from public disclosure in a Chapter 119, *Florida Statutes*, public records requests, including: "[s]ocial security numbers held by an agency are confidential;" "[b]ank account numbers and debit, charge, and credit card numbers held by an agency;" and clinical records. *See Florida Statutes* § 119.071(5)(a)(5), § 119.071(5)(b), and § 394.4615(1). Furthermore, an exemption under the Chapter 119 exists for

student educational records, which provides, in relevant part: "[a] public postsecondary educational institution may not release a student's education records without the written consent of the student to any individual . . . except in accordance with and as permitted by the FERPA." § 1006.52(2), *Fla. Stat.* (2015)

3. "Florida has long required those who seek [public] records to defray the extraordinary costs associated with their requests." *Bd. of Cty. Comm'rs of Highlands Cty. v. Colby*, 976 So. 2d 31, 35 (Fla. 2d DCA 2008). Indeed, section 119.07(4)(e), *Florida Statutes*, provides as follows:

If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both.

§ 119.07(4)(e), *Fla. Stat.*

4. Furthermore, where a service charge is warranted, an agency, such as USF, is authorized to require payment *before* producing the records. *See Morris Publ'g*, 154 So. 3d at 534; *Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991); *Colby*, 976 So. 2d at 37.

5. Chapter 119, *Florida Statutes*, likewise expressly allows custodians to withhold documents until the permitted fee is tendered by the requestor. Specifically, section 119.07(4), *Florida Statutes*, provides, in relevant part: "The custodian of public records shall furnish a copy

or a certified copy of the record *upon payment of the fee* prescribed by law.” § 119.07(4), *Fla. Stat.* (emphasis added). Florida courts have ruled that “[r]equiring an advance deposit is prudent given the legislature's determination that taxpayers should not shoulder the entire expense of responding to an extensive request for public records.” See *Fla. Agency for Health Care Admin. v. Zuckerman Spaeder, LLP*, 221 So. 3d at 1263. Moreover, a person who has requested, but has failed to pay for the cost of production is not entitled to mandamus relief on a public records request. See *Lozman v. City of Riviera Beach*, 995 So. 2d 1027 (Fla. 4th DCA 2008).

6. DeBose's August 12, 2015, PRR, August 16, 2015, PRR, and August 31, 2015, PRR seek voluminous documents that necessitate the use of extensive IT resources and/or clerical support. “Information technology resources” means “data processing, hardware and software services, communications, supplies, personnel, facility, resources, maintenance, and training.” § 119.011(9), *Fla. Stat.* A local government's formula for calculating its special service charge based on its determination that it will take more than 15 minutes to locate, review for confidential information, copy, and refile the requested material has been approved and upheld in Florida. See *Florida Institutional Legal Servs., Inc. v. Fla. Dept. of Corrections*, 579 So. 2d 267 (Fla. 1st DCA 1991), *rev. denied*, 592 So. 2d 680 (Fla. 1991) (court upheld hearing officer's order rejecting inmates' challenge to the Department of Corrections' rule defining “extensive” for purposes of special service charge to mean it would require more than 15 minutes to locate, review, copy, and refile requested material). Specifically, in *Florida Institutional Legal Servs., Inc. v. Fla. Dept. of Corr.*, 579 So. 2d 267 (Fla. 1st DCA 1991), *rev. denied*, 592 So. 2d 680 (Fla. 1991), the court stated that “[t]he essence of the appellant's argument before this court was that DOC was improperly charging appellant for the DOC's review for and excision of information in the inmate files which DOC deems confidential.” 579 So. 2d at 268. The court ruled that the special service charge could be imposed for work if the volume of records and the number of

potential exemptions make review and redaction of the records a time-consuming task. Here, ~~DeBose's August 16, 2015, PRR, August 12, 2015, PRR, and August 31, 2015, PRR requests total~~ nearly 35,000 emails, and, given her former position as the USF's Registrar, it is likely that many of those emails include exempt information that USF is required, by federal and Florida state laws, to protect.

7. USF clearly has a duty to redact public records under both federal and state laws, and Chapter 119, *Florida Statutes*, permits USF to charge a special service fee when the review of such documents require extensive IT and clerical review, as is the case here. Courts additionally have "recognized a records custodian's duty to redact exempted portions of public records *before* they are released." *Fla. Agency for Healthcare Admin. v. Zuckerman Spaeder, LLP*, 221 So. 3d at 1264 ("Further, decisions of this Court and the language of § 119.07(f), Florida Statutes, dictate that Zuckerman should be required to pay for the cost of searching, review, and redaction of exempted information prior to production") (emphasis added).

8. As to reasonableness of hourly rates for reviewing documents, \$35.00 per hour has been found by at least one Florida court to be a reasonable rate for the "redaction of exempt material when special expertise is required for redaction." *Lang v. Reedy Creek Improvement Dist.*, Case No. CJ-5546 (Orange Cty. Cir. Ct. 1995). Here, USF charged DeBose a considerably lower hourly rate of \$19.73. In fact, USF has not included Mohn's benefits in its hourly rate calculation, despite the fact that, in calculating the special service charge for responding to extensive public records requests, agencies may include the cost of benefits in the labor calculation. *See Colby*, 976 So. 2d at 37 ("[w]e approve the County's formula that includes both an employee's salary and his or her benefits when calculating the labor costs to be included in the special service charge authorized by that statute").

9. In considering counsel's arguments and submissions, it appears to the Court that the majority of DeBose's arguments regarding the reasonableness of USF's charges focus on USF's public records review and production policies and procedures and the manner in which USF has applied these policies and procedures to her requests. [10/09/18 Evidentiary Hearing Transcript, Solis 58:1-2] For instance, DeBose complained of the inefficient manner in which USF handled her requests by going through IT, rather than by reaching out to each of the individual custodians and requesting them to perform their own searches; criticized USF for failing to use certain redaction software which, in her own opinion (as she failed to present any expert opinion testimony on this issue), would have expedited the review process thereby reducing the cost of Mohn's manual review and redaction time; challenged USF's manual review and redaction procedure maintaining (without any evidentiary support) that it was unlikely that confidential or exempt information would be included in emails thereby making a thorough manual review unnecessary and the cost for same unreasonable; and argued that she, even after having left the employment of USF, should have been allowed to "preview" her emails to reduce or eliminate Mohn's review and redaction time claimed to be necessary by USF.

10. These arguments are similar to the types of arguments made by the petitioner in *Morris Publ'g Grp., LLC v. State of Fla.*, 154 So. 3d 528 (Fla.1st DCA 2015). The issue before the court in *Morris*, was whether the application of a public records review policy to the facts of the case amounted to an unlawful delay and denial of access. 154 So. 3d at 533. The *Morris* court observed that this "application" theory previously had been recognized by the First District Court of Appeal in *Johnson v. Jaris*, 74 So. 3d 168, 171 (Fla. 1st DCA 2011), and its "inquiry centers on whether the application of the policy resulted in an unjustified delay that amounted to an unlawful refusal to comply with chapter 119." *Id.* In *Morris*, the petitioner argued that the respondent's public records review policy was "combative, inefficient, unduly expensive, and prolonged, which made it virtually impossible" to get access to the requested documents in a reasonable time. Ultimately, the First District Court of Appeal agreed with the

trial court that the respondent's public records review policy was facially reasonable and ruled that the respondent had no legal duty to make its public review policies more economically efficient and faster for the petitioner. *Id.* at 535.

11. It likewise appears that DeBose is contending that USF's application of its public records review policies and procedures to the facts in this case is creating unreasonably high charges for the documents requested and these unreasonably high charges are tantamount to a denial of access. As did the court in *Morris*, this Court too declines, in the absence of clear legislative intent or case law requiring USF to be more efficient in the manner in which it reviews its public records, to conclude that USF has a duty to do so. No evidence was presented that USF has abused its policies and procedures or has been arbitrary in their application. USF has adequately explained its charges and presented competent, substantial evidence to support the number of emails identified as being responsive to each of DeBose's PRR's at issue in this case. Absent a clear duty, the Court concludes that USF's review policies and procedures are reasonable in their application to the facts of this case.

Summary of Conclusions

12. Based on the competent substantial evidence presented in this case, the Court concludes as follows:

- a. USF's policies and procedures regarding the manner in which it uses IT to perform searches for public records and it manually reviews public records for exemptions and manually redacts exempt information are both facially reasonable and reasonable in their application to the facts in this case;
- b. USF has exercised these policies and procedures consistently and uniformly and has handled DeBose's PRR's at issue in the same manner as it has handled others;
- c. the manner in which USF determines whether a search will require extensive use of IT resources, file retrieval, queries, etc. is reasonable;

d. the manner in which USF determines whether a search will require extensive clerical and/or supervisory labor is reasonable;

e. the number of emails reflected in each of the charge documents at issue - Charge Document #1, Charge Document #2, Charge Document #3, and Charge Document #4 - is reasonable;

f. the manner in which USF calculates the IT cost for a public records request is reasonable and the IT costs reflected in Charge Document #1, Charge Document #2, Charge Document #3, and Charge Document #4 are reasonable;

g. the manner in which USF calculates the labor cost involved for a public records request is reasonable and the labor costs reflected in Charge Document #1, Charge Document #2, Charge Document #3, and Charge Document #4 are reasonable; and

h. the total estimated costs of duplication, processing, labor, and production reflected in Charge Document #1, Charge Document #2, Charge Document #3, and Charge Document #4 are reasonable.

13. Accordingly, for the reasons articulated above, DeBose's Second Amended Writ is **DENIED**, in part, as to DeBose's public records requests numbers five through 14, and 21 and otherwise identified in this Order as the August 12, 2015, PRR; the August 16, 2015, PRR; and the August 31, 2015, PRR.

DONE AND ORDERED on 8/20


ELIZABETH G. RICE
CIRCUIT JUDGE

Electronically conformed copies furnished via JAWS to:
-Angela DeBose
-Richard McCrea, Esq. and Cayla M. Page, Esq.

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
GENERAL CIVIL DIVISION**

ANGELA DEBOSE,
Petitioner,

CASE NO.: 15-CA-5663

v.

DIVISION: A

**USF BOARD OF TRUSTEES, USF
ACADEMIC AFFAIRS OF USF,
STUDENT SUCCESS OF USF, and
PAUL DOSAL,**
Respondents.

FILED
CLERK OF CIRCUIT COURT
2015 JUN 25 PM 2:10
HILLSBOROUGH COUNTY FLA
CIRCUIT CIVIL

ALTERNATIVE WRIT OF MANDAMUS

THIS MATTER is before the Court on Petitioner, ANGELA DEBOSE's, Petition for Extraordinary Writ of Mandamus, filed June 22, 2015, in which Petitioner seeks a writ of mandamus to compel Respondents to provide access to public records. Mandamus may lie "where public officials or agencies may be coerced to perform ministerial duties that they have a clear legal duty to perform." *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996). "A duty or act is defined as ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law." *Id.* When a party petitions for mandamus, they "must establish a clear legal right to performance of the act requested, an indisputable legal duty, and no adequate remedy at law." *Radford v. Brock*, 914 So. 2d 1066, 1067 (Fla. 2d DCA 2005) (quoting *Smith v. State*, 696 So. 2d 814, 815 (Fla. 2d DCA 1997)). "If the petition is facially sufficient, the court must issue an alternative writ of mandamus requiring the respondent to show cause why the writ should not be issued." *Id.* Upon review of the Petition, the Court finds that it is facially sufficient.

It is therefore **ORDERED** and **ADJUDGED** that Respondents shall respond in writing **WITHIN FIFTEEN (15) DAYS** of the date of this Order and **SHOW CAUSE**, if any, why the Petition should not be granted, and serve same on Petitioner. Upon receipt of said response, Petitioner shall properly notice a hearing on this matter on a date and at a time mutually agreeable to all parties by contacting the undersigned's judicial assistant.

25 **DONE AND ORDERED**, in Chambers in Tampa, Hillsborough County, Florida, this
day of June, 2015.


CHERYL THOMAS,
Circuit Court Judge

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**Additional material
from this filing is
available in the
Clerk's Office.**