

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

FLORIDA POLICE BENEVOLENT
ASSOCIATION, INC., A Florida
Citizen; JOHN DOE 1, and JOHN
DOE 2, A Florida Citizen,

Petitioners,

CASE NO.: 2020 CA 1011

v.

CITY OF TALLAHASSEE, FLORIDA,

Respondent.

**ORDER ON PETITION FOR DECLARATORY JUDGMENT, WRIT OF MANDAMUS,
AND PRELIMINARY INJUNCTION**

A hearing was held on July 13, 2020 on the Florida Police Benevolent Association, Inc.'s ("the PBA") petition for declaratory judgment, writ of mandamus, and preliminary injunction. All parties were represented by counsel at the hearing. Counsel attended the hearing by telephone because of the COVID-19 pandemic.

The PBA filed this suit against the City of Tallahassee attempting to prevent the disclosure of public records identifying the names of two City police officers involved in separate, on-duty shootings resulting in the deaths of two civilians. Intervening in the case were The First Amendment Foundation, Florida Press Association, Gannett Co., Inc., Miami Herald Media Company, and The New York Times Company (collectively, the "Intervenors").

The PBA asserts the names of the two City police officers should not be disclosed because those two officers are crime victims as covered by Article 1, Section 16 of the Florida Constitution, referred to as Marsy's Law. The City and the Intervenors claim law enforcement officers are not covered by Marsy's Law under the circumstances of this case, and that these records must be

APPENDIX A

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produced pursuant to Article 1, Section 24 of the Florida Constitution, referred to as the Public Records Law.

There appears to be no significant dispute regarding certain facts of these two incidents involving these officers referred to as Doe 1 and Doe 2. According to the pleadings, officer Doe 1 fatally shot a suspect brandishing a knife at him in a threatening manner. Officer Doe 2 fatally shot a person who was pointing a gun at him. The PBA asserts both officers were victims of an aggravated assault with a deadly weapon under Florida's criminal law.

The PBA contends the officers' names should not be produced because they are protected by Marsy's Law, which provides in pertinent part at Article 1, Section 16, (b) (5) of the Florida Constitution:

(b) To preserve and protect the right of crime victims to achieve justice, ensure a meaningful role throughout the criminal... justice system for crime victims, and ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants... every victim is entitled to the following rights, beginning at the time of his or her victimization:

(5) The right to prevent the disclosure of information or records that could be used to locate or harass the victim... or which could disclose confidential or privileged information of the victim.

The City and the Intervenors contend the officers' names should be produced because of the Public Records Law, Article 1, Section 24 (a) of the Florida Constitution, which provides in pertinent part as follows:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on

their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.

The ultimate issue to be decided by this Court is whether the explicit language of Marsy's law was intended to apply to law enforcement officers as "victims" for acts done while on duty.

The express purpose of Marsy's Law is to afford crime "victims" the right to be more directly involved throughout the criminal process and to be kept informed of key proceedings. Art. I, § 16(b), Fla. Const. Marsy's Law defines a "victim" as "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime...." Art. I, § 16(e), Fla. Const. The definition of "victim" must be viewed in the context of the purpose of the law.

The Court finds that the explicit language of Marsy's Law was not intended to apply to law enforcement officers when acting in their official capacity. Marsy's Law provides "victims" certain rights such as the "right to due process and to be treated with fairness and respect for the victim's dignity," the right "within the judicial process, to be reasonably protected from the accused" and the right "to have the safety and welfare of the victim and the victim's family considered when setting bail, including setting pretrial release conditions." Art. I, § 16(b)(1), (3), (4), Fla. Const.

In the case at hand, Petitioner seeks to treat officers Doe 1 and Doe 2 as victims; however, the would-be accuseds are dead, killed by the officers in the line of duty. The officers do not seek protection from the would-be accuseds, instead they apparently seek protection from possible retribution for their on-duty actions from unknown persons in the community. This type of protection is outside the scope of Marsy's Law and is inconsistent with the express purpose and

language of the amendment. This Court cannot interpret Marsy's Law to shield police officers from public scrutiny of their official actions.

Law enforcement officers have a unique public duty to enforce the laws of our State. Theirs is a very difficult and important job. The public has a vital right to evaluate the conduct of our law enforcement officers, who are empowered to arrest people and use deadly force. For this Court to hold that on-duty law enforcement officers may use Marsy's Law to prevent the disclosure of their names would provide them with a protection not intended by the express purpose of that law.

Finding that officers may avail themselves of "victim" status under Marsy's Law would create a situation in which officers could act with virtual anonymity when resisted with violence in the course of placing someone under arrest, when an officer is battered, or when officers are involved in a shootout with an armed individual barricaded in a home. The Court must interpret these two constitutional provisions to give a harmonious reading to them. The Court must balance crime "victim" rights under Marsy's Law and the public's right to hold government accountable by inspecting state records. This case presents a situation in which law enforcement seeks to enforce its interpretation of a specific constitutional provision which has the practical effect of removing their actions from public scrutiny. This is inconsistent with the expressed purpose of Marsy's Law.


Article I, Section 24 of the Florida Constitution grants the public a broad right to inspect and copy the records of any state or local agency. When in doubt as to whether a record is public, the question is resolved in favor of disclosure. See Nat'l Collegiate Athletic Ass'n v. Associated Press, 18 So. 3d 1201, 1206 (Fla. 1st DCA 2009). Historically, the courts have held that the public has First Amendment-based rights to gather information about police officers' on-duty public actions, and that officers have no recognizable expectations of privacy in the same. See, e.g., Smith

v. City of Cumming, 212 F.3d 1332, 1333 (11th Cir. 2000). Individual officer names are vital for the public's ability to evaluate not only the officer's history of the use of force, but also the agency's treatment and discipline of its officers. Knowing the name of a police officer enables the public to conduct that meaningful review. See Tribune Co. v. Cannella, 438 So. 2d 516, 521 (Fla. 2d DCA 1983).

In addition, there is no specific exemption in Marsy's Law that allows for the protection of a name. Art. 1, § 16(b)(5), Fla. Const., states "information or records that could be used to locate or harass the victim" may be protected from disclosure. Victims' names are not specifically protected. Public records exemptions already exist to protect law enforcement officer information, including their homes addresses, telephone numbers, dates of birth, and photographs in order to "ensure the safety of these officers and their families." § 119.071(4)(d), Fla. Stat. But that statutory exemption does not prohibit the release of law enforcement officers' names.

Based on the foregoing, the Court finds that the explicit language of Marsy's law was not intended to apply to law enforcement officers when acting in their official capacity. Accordingly, the relief requested by the Petitioner is **DENIED**. The City is ordered to disclose the requested public records in a form that identifies the names of officers Doe 1 and Doe 2.

DONE AND ORDERED in Chambers, Tallahassee, Leon County, Florida, on this 24th day of July, 2020.



CHARLES W. DODSON
Circuit Judge

Copies furnished to counsel of record via E-Portal