IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
DIVISION _____

**REED BREWER** **PLAINTIFF**

vs. Case No. 60CV-18-_____

**CINDY GILLESPIE,**
**in her official capacity as Director of**
**ARKANSAS DEPARTMENT OF HUMAN SERVICES** **DEFENDANT**

## ARKANSAS FREEDOM OF INFORMATION ACT COMPLAINT AND REQUEST FOR IMMEDIATE HEARING

COMES NOW Plaintiff Reed Brewer by and through his attorney Chris Burks of Sanford Law Firm, PLLC, and for his Arkansas Freedom of Information Act Complaint and Request for Immediate Hearing against Defendant Cindy Gillespie in her official capacity as Director of the Arkansas Department of Human Services ("DHS"), does hereby state and allege as follows:

### I. INTRODUCTION

Arkansas Attorney General Leslie Rutledge was "terminated" from her job as an attorney for DHS, but DHS is refusing to release her personnel records and job performance records in violation of longstanding law. There is a compelling public interest in releasing job performance records pertaining to the firing of the State's chief law enforcement officer, who is entrusted with millions of taxpayer dollars. Further, it is not a clearly unwarranted invasion of personal privacy to release personnel records of a public figure who has willingly put her job performance in the public spotlight.

## II.

## PARTIES

### A. Reed Brewer

1. Reed Brewer is an adult citizen and resident of Pulaski County, Arkansas, and a registered voter in Pulaski County, Arkansas.

2. Brewer brings this appeal as a matter of right under Arkansas Code Annotated § 25-19-107, as he requested specific public records from DHS, and Defendant actually and constructively denied a portion of the Plaintiff's request, entitling the Plaintiff to a hearing in this court. Ark. Code Ann. § 25-19-107(a); *see Orsini v. State*, 340 Ark. 665, 13 S.W.3d 167 (2000).

### B. Cindy Gillespie in her capacity as Director of DHS

3. Defendant Cindy Gillespie is the Director of Arkansas DHS, a state agency, tasked with providing, upon proper request, access to public records as defined in Arkansas Code Annotated § 25-19-103(5)(a), subject to any exclusions in Arkansas Code Annotated § 25-19-105(b) and/or limitations in Arkansas Code Annotated § 25-19-105(c). *See* Ark. Code Ann. §§ 25-19-105(d)(1) to -105(d)(2).

4. A suit against a state employee in her official capacity is not a suit against that person but, rather, a suit against an illegal act undertaken through an employee's office. *See George v. Ark. Dep't of Human Servs.*, 88 Ark. App. 135, 195 S.W.3d 399 (2004). The agency director, in her official capacity, is the properly named party in an appeal from the denial of rights under the AFOIA. *See generally Scott v. Smith, 292 Ark. 174, 728 S.W.2d 515 (1987).*

## III.

## JURISDICTION AND VENUE

5. This is an appeal from a denial of rights under the Arkansas Freedom of Information Act, A.C.A. § 25-19-101, *et seq.*

6. This court has subject-matter jurisdiction pursuant to Arkansas Code Annotated section 25-19-107(a).

7. Venue lies in Pulaski County because the DHS is a state agency, Plaintiff resides in Pulaski County, and the events leading to this lawsuit occurred entirely within Pulaski County. See Ark. Code Ann. § 25-19-107(a).

## IV.

## BACKGROUND FACTS

8. The preceding paragraphs are incorporated herein as if set forth word for word.

9. Plaintiff filed a Freedom of Information Act request on July 02, 2018, at 1:54 p.m., in which he requested Leslie Rutledge's "personnel file from when she was an employee of the agency and communication since she was an employee through current day." See *Exhibit 1*.

10. On July 5, DHS acknowledged that the request related to personnel information and requested a 5-day extension. See *Exhibit 2*.

11. Plaintiff did not agree to an extension.

12. On July 25, 2018, DHS requested another extension. See *Exhibit 3.*

13. Only when DHS failed to produce the records after more than two weeks did Plaintiff eventually agree to an extension on the personnel file until July 27, 2018, and email production until August 3, 2018.

14. However, at no time did Plaintiff agree to an extension of the personnel file or job performance records therein beyond past July 27, 2018. *Exhibit 3.*

15. On July 27, 2018, Plaintiff received the attached 51-page "responsive document" purporting to be only part of Leslie Rutledge's "personnel file from when she was an employee of the agency." *Exhibit 4.*

16. The remainder of the file was denied due to "public interest issues." See *Exhibit 5.*

17. A mere cursory review of the July 27, 2018, redacted documents show that it is in fact only a partial personnel file that does not include all job performance records and personnel file records.

18. In particular, no emails between Rutledge's supervisors are included beyond the one termination email, no emails directing Rutledge on how to do or not do her job are included, and no emails on how good of a job she is doing are included.

19. Further, this file is the exact same 51-page document released in 2014; however, the 2014 file was admittedly incomplete and Leslie Rutledge

claimed at the time that her "personnel records had been altered by DHS employees."[1]

20. As of the date of this filing, Plaintiff has still not received the "personnel file from when she was an employee of the agency and communication since she was an employee through current day" as requested and legally entitled to.

**V.**

**COUNT I:**

**REFUSAL TO PROVIDE PUBLIC RECORDS**

21. The preceding paragraphs are incorporated herein as if set forth word for word.

22. Arkansas courts liberally construe the Arkansas Freedom of Information Act to accomplish its broad and laudable purpose that public business be performed in an open and public manner, and courts broadly construe the FOIA in favor of disclosure. *See Fox v. Perroni*, 358 Ark. 251, 188 S.W.3d 881 (2004).

23. The remaining records requested by Plaintiff are being withheld as personnel records or as employee-evaluation records.

24. Under Ark. Code Ann. § 25-19-105(b)(12) personnel records are only exempt from the FOIA "to the extent that disclosure would constitute a clearly unwarranted invasion of personal privacy."

---

[1] 'DNR': DHS made it clear it didn't want to rehire Leslie Rutledge when she left the state agency; https://www.arktimes.com/ArkansasBlog/archives/2014/09/11/dnr-dhs-made-it-clear-it-didnt-want-to-rehire-leslie-rutledge-when-she-left-the-state-agency; Arkansas Times, September 11, 2014.

25. Further, Ark.Code Ann. § 25-19-105(c)(1) provides that employee-evaluation records are open for public inspection when the evaluation records formed a basis for that adverse employment action to suspend or terminate, and there is a "compelling public interest" in disclosure.

26. Here, there is a compelling public interest in releasing job performance records about firing the State's chief law enforcement officer who is entrusted with millions of taxpayer dollars.

27. These records of a DHS attorney shed light on how a high-level law enforcement official handled internal government workings and did nor did not comply with the public funds and responsibilities entrusted her.

28. That Leslie Rutledge was "terminated" likely means there was conduct that could have undermined the public trust, compromised public safety, and was possibly even illegal. There has been much public controversy and interest over her "termination."

29. Further, it is not a clearly unwarranted invasion of personal privacy to release personnel records of a public figure who has willingly put her job performance in the public spotlight. The personnel records would shed light on how DHS and Leslie Rutledge operated in private, and would especially show whether important government laws and procedures were or were not followed.

30. Lastly, without an *in camera* review with counsel for all sides of the withheld personnel file material, it is not entirely clear that the personnel records are of an intimate nature sufficient to give rise to a substantial privacy interest in the first instance.

31. If the withheld personnel file material is not sufficiently intimate, then the Court need not consider whether piercing the privacy interest is clearly unwarranted and can order the records disclosed without further analsyis.

32. But even if the Court finds that the withheld records are of an intimate nature sufficient to give rise to a substantial privacy interest, this interest is outweighed by the public's right to know whether important government laws and procedures were followed by an important public official whose essential duty is following and enforcing government laws and procedures.

33. There is no provision of the Freedom of Information Act that allows a custodian of records to pick and choose how to partially comply with a legal request. *See generally Daugherty v. Jacksonville Police Department*, 2012 Ark. 264 (holding that the FOIA "does not give the custodian of records the power to pick and choose which requests it may comply with," nor may a custodian disclose only the records that he deems relevant).

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

## VII.

## RELIEF SOUGHT

WHEREFORE, based on the foregoing, Plaintiff prays that this Court will:

A) Find that Defendant, either in bad faith or negligently, failed to comply with the FOIA with respect to Plaintiff's June 02, 2018, request.

B) Order that Defendant fulfill Plaintiff's request as required by state law.

C) Issue a modified summons that fixes and assesses a day the petition is to be heard within seven (7) days of the date of this application, and hear and determine the case as required by Arkansas Code Annotated § 25-19-107(b).

D) grant Plaintiff fees and costs in pursuing this matter; and

E) grant all other just and proper relief, whether prayed for specifically herein or not.

Respectfully submitted,

**PLAITNIFF REED BREWER**

SANFORD LAW FIRM, PLLC
One Financial Center
650 South Shackleford, Suite 411
Little Rock, Arkansas 72211
Telephone: (501) 221-0088
Facsimile: (888) 787-2040

By: */s/ Chris Burks*
Chris Burks
Ark Bar No. 2010207
chris@sanfordlawfirm.com