

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO. 10-23089

DIVISION: 03

WILLIAM MORGAN,)
)
Plaintiff,)
)
vs.)
)
CHADWICK E. WAGNER, Chief of)
Police of the City of Hollywood, Florida;)
and MICHAEL J. SATZ, State Attorney for)
the Seventeenth Judicial Circuit in and for)
Broward County, Florida; and JOSEPH)
MATTHEWS, custodian of the document at)
issue,)
)
Defendants.)
_____)

Defendant's, Michael J Satz, Answer to Complaint to Enforce the Public Records Law
and Article I, section 24 of the Florida Constitution

The Defendant, MICHAEL J. SATZ, by and through the undersigned Assistant State Attorney,
files this Answer to the Plaintiff's complaint, and states:

1. Admits the allegations contained in Paragraph 1.
2. Admits the allegations contained in Paragraph 2.
3. Admits the allegations contained in Paragraph 3.
4. Is without knowledge of the allegations contained in Paragraph 4
5. Admits that Chadwick E. Wagner, Chief of Police of the City of Hollywood, Florida and Michael J. Satz are defendants in this complaint; is without knowledge as to whether Joseph Matthews is a citizen and resident of Broward County, Florida; admits Joseph Matthews is the custodian of the document that is the subject of this complaint; and is without knowledge as to whether the document that is the subject matter of this complaint is in fact a "public record".

6. Is without knowledge of the allegations contained in Paragraph 6.

The Abduction of Adam Walsh

7. Admits the allegations contained in Paragraph 7.
8. Admits the allegations contained in Paragraph 8.
9. Admits the allegations contained in Paragraph 9.

Opening of the Investigative Files

10. Admits the allegations contained in Paragraph 10.
11. Admits the allegations contained in Paragraph 11.
12. Admits the allegations contained in Paragraph 12.
13. Admits the allegations contained in Paragraph 13.
14. Admits the allegations contained in Paragraph 14.
15. Admits the allegations contained in Paragraph 15.
16. Admits the allegations contained in Paragraph 16.
17. Admits the allegations contained in Paragraph 17.
18. Admits the allegations contained in Paragraph 18.
19. Admits the allegations contained in Paragraph 19.

Subsequent Investigations Point to Jeffrey Dahmer

20. Admits the Hollywood, Florida Police Department and the State Attorney's Office of the Seventeenth Judicial Circuit of Florida did continue to investigate Adam Walsh's death notwithstanding the release of the investigative files accumulated as of February 16, 1996 and the death of Ottis Toole in 1996; however, the defendant, Michael J. Satz, is without knowledge as to whether the plaintiff and others have continued to investigate Adam Walsh's death.
21. Is without knowledge of the accuracy of all the allegations contained in Paragraph 21.
22. Is without knowledge of the accuracy of the allegations contained in Paragraph 22.
23. Is without knowledge of the accuracy of the allegations contained in Paragraph 23.
24. Is without knowledge of the accuracy of the allegations contained in Paragraph 24.

25. Is without knowledge of the accuracy of the allegations contained in Paragraph 25.
26. Is without knowledge of the plaintiff's beliefs and the accuracy of the allegations contained in Paragraph 26.

Matthews' Conclusion that Ottis Toole is the Murderer
Leads Police and Prosecutors to Close Their Investigations

27. Admits the allegations contained in Paragraph 27.
28. Matthews is the sole author of the document that is the subject matter of this complaint. Plaintiff's characterization of Matthews' document is not accurate. Matthews authored a document containing his [Matthews'] personal investigative theories and conclusions concerning Adam Walsh's death in a document titled "A Cry For Justice," and viewed by Chief Assistant State Attorney Chuck Morton for the State Attorney's Office of the Seventeenth Judicial Circuit of Florida. At all times material to the writing of the document Matthews was a retired law enforcement officer, and at no time did Matthews create or author the document on behalf of, at the request of, or for the use of any national, state, or local public agency in the transaction of official business.
29. Is without knowledge as to how Matthews' document was used in Hollywood, Florida Police Department's official capacity; denies the allegation that the Hollywood, Florida Police Department provided Matthews' document to the State Attorney's Office of the Seventeenth Judicial Circuit of Florida, but rather, the document was given directly to Chief Assistant State Attorney Chuck Morton by Matthews himself or his representative; and denies the Matthews document was viewed as a part of an official investigation of the State Attorney's Office.
30. Denies the State Attorney's Office announced on or about December 16, 2008 that its investigation or prosecution of Adam Walsh's death would be closed. The state attorney's investigation of Adam Walsh's death was "inactive" before viewing Matthews' document and the status of its investigation never changed after viewing

Matthews' document. The Hollywood Police Department's decision and public announcement to "exceptionally clear" the case was not a state attorney official act or function. In fact, the State Attorney's Office stated in a letter in response to the Hollywood Police Department's decision to "exceptionally clear" the case that it would never exclude the prosecution of any person upon the presentation of sufficient evidence to support a conviction. (See attached Exhibit "A" to this answer – letter dated December 9, 2008). In that letter the State Attorney's Office expressly pointed out that Hollywood's decision to "exceptionally clear" the case is uniquely its own department decision and is not a prosecutorial decision by the office.

31. Denies the allegations pertaining to the State Attorney's Office in Paragraph 31. In fact, no representative from the State Attorney's Office attended or participated in the press conference alleged in Paragraph 31.
32. Admits the allegations in Paragraph 32. (The full written response to the Miami Herald is attached as Exhibit "B" to this answer)
33. Denies the accuracy and truthfulness of the assertions contained in the Miami Herald's May 28, 2010 article as alleged in Paragraph 33.
34. Admits the allegations contained in Paragraph 34.
35. Is without knowledge of the allegations contained in Paragraph 35.
36. Denies the accuracy and truthfulness of the assertions contained in the Miami Herald articles as alleged in Paragraph 36.

The Demand for Production of the Matthews Report

37. Is without knowledge of the allegations contained in Paragraph 37.
38. Admits the allegations contained in Paragraph 38.
39. Admits the allegations contained in Paragraph 39.
40. Admits the allegations contained in Paragraph 40.
41. Admits the allegations contained in Paragraph 41.
42. Admits the allegations contained in Paragraph 42.

Failure to Produce the Matthews Report

- 43. Admits the allegations contained in Paragraph 43.
- 44. Neither admits or denies the allegations contained in Paragraph 44.
- 45. Neither admits or denies the allegations contained in Paragraph 45.
- 46. Is without knowledge of the allegations contained in Paragraph 46.
- 47. Neither admits or denies the allegations contained in Paragraph 47.
- 48. Denies the allegations contained in Paragraph 48.
- 49. Denies the allegations contained in Paragraph 49.

Count I

Enforcement of the Public Records Law

- 50. Defendant, Michael J. Satz, repeats and incorporates by reference the answers provided in response to Paragraphs 1 through 49 of the Plaintiff's complaint.
- 51. Admits that the definition of a "public record" contained in Paragraph 51 is accurate.
- 52. Admits that the definition of an "agency" contained in Paragraph 52 is accurate.
- 53. Is without knowledge of the allegations contained in Paragraph 53 as to Plaintiff's definition of the word "received."
- 54. Is without knowledge of the allegations contained in Paragraph 54.
- 55. Is without knowledge of the allegations contained in Paragraph 55.
- 56. Is without knowledge of the allegations contained in Paragraph 56. The document titled "A Cry for Justice" was never viewed by any employee of the Office of the State Attorney to be used for any investigative or prosecution function. All "investigative information" utilized by the state attorney's office to investigate either Ottis Toole or Jeffrey Dahmer as a potential suspect in Adam Walsh's death was procured separate from and independent of viewing the Matthews document. (See State Attorney's Office entire investigative file which is currently open for public inspection pursuant to a public records request)

57. Admits the allegations contained in Paragraph 57 assuming this court finds that the Matthews document is, in fact, a "public record".
58. Is without knowledge of the allegations contained in Paragraph 58.
59. Is without knowledge of the allegations contained in Paragraph 59.
60. Is without knowledge of the allegations contained in Paragraph 60.

Count II

Declaratory Judgment that Defendants Have
Not Properly Maintained Public Records as Required by Law

61. Defendant, Michael J. Satz, repeats and incorporates by reference the answers provided in response to Paragraphs 1 through 49 of the Plaintiff's complaint.
62. Admits the statement of law alleged in Paragraph 62 is a correct statement of the law. The defendant, Michael J. Satz, further says that, even if a public official or agency receives private documents or property, Section 119.021, Florida Statutes (2010) does not obligate a public official or agency to copy or maintain possession of the private documents or property of another that is not used for official business.
63. Admits the statement of law alleged in Paragraph 63 is a correct statement of the law.
64. Admits the statement of law alleged in Paragraph 64 is a correct statement of the law.
65. Is without knowledge of the allegations contained in Paragraph 65.
 - A. Denies the allegations contained therein.
 - B. Denies the allegations contained therein.
 - C. Defendant, Michael J. Satz, further says that the document titled "A Cry for Justice," that is the subject matter of this complaint, was returned to Matthews by Chief Assistant State Attorney Chuck Morton upon the assurance of Matthews that he would provide the document for court review should a public records dispute arise.
 - D. Denies the allegations contained therein.
 - E. Denies the allegations contained therein.

F. Denies the allegations contained therein.

G. Denies the allegations contained therein.

Count III

Injunction Requiring the Defendants to
Maintain the Matthews Report as Required by Law

- 66. Defendant, Michael J. Satz, repeats and incorporates by reference the answers provided in response to Paragraphs 1 through 49 of the Plaintiff's complaint.
- 67. Is without knowledge of the allegations contained in Paragraph 67.
- 68. Is without knowledge of the allegations contained in Paragraph 68.

AFFIRMATIVE DEFENSES

**THE DOCUMENT "A CRY FOR JUSTICE" IS NOT A PUBLIC
RECORD AS TO THE OFFICE OF THE STATE ATTORNEY**

As noted in *National Collegiate Athletic Association v. Associated Press*, 18 So.3d 1201, 1207 (Fla. 1st DCA 2009), a document may qualify as a public record if it was received by a government agent and used in the transaction of public business. In reviewing the issue of whether the material sought was a public record, the First District Court of Appeal accepted the argument of the NCAA that the mere fact that an agent of the government looks at or views a document does not make that document a public record. *Id.* at 1208.

Unlike the factual situations in the *Associated Press* case and *Times Publishing Company, Inc. v. City of St. Petersburg*, 558 So.2d 487 (Fla. 2d DCA 1990), the document at issue was not used for any official governmental purpose. In the *Associated Press* case, the documents sought were examined and used to further its appeal to the NCAA regarding penalties imposed by that organization. Similarly, the documents sought in the *Times Publishing* case were deemed to be public record, because they were reviewed by city officials to further the goal of the

City of St. Petersburg to have the Chicago White Sox to move that city. In this matter, the document sought was not used in any matter to further a governmental purpose. At no time did Matthews request the Office of the State Attorney to read the document to supplement its already completed investigation or to perform an official act. Furthermore, there was never a request by any employee of the Office of the State Attorney to Defendant Matthews to present his manuscript to the office to further its investigation or prosecution of any suspect in the case. As noted in the December 9, 2008 letter to Chief Wagner (Exhibit "A" to this answer), the Office of the State Attorney merely reviewed the materials provided by Matthews. Such review did not translate a document titled "A Cry for Justice" into a public record.

**THE OFFICE OF THE STATE ATTORNEY HAS NOT UNLAWFULLY
WITHHELD THE MANUSCRIPT AND HAS ACTED
IN GOOD FAITH**

Notwithstanding the fact that the document titled "A Cry for Justice" is not a public record for purposes of the Public Record Act as applied to the Office of the State Attorney, it has not unlawfully refused permission to inspect "A Cry for Justice." Documents attached to the complaint clearly show that the Office of the State Attorney has acted in good faith regarding this request. The April 21, 2010 letter to counsel for the Plaintiff (Exhibit C to the complaint) demonstrates that efforts were made through counsel of Matthews to allow voluntary inspection of the document, and that the Office of the State Attorney would continue to make every effort to contact Mr. Matthews and repeat our request that he should voluntarily make available a copy of the document for the inspection of the Plaintiff. Similarly, the letter of April 26, 2010 to Matthews (Exhibit E of the Plaintiff's complaint) clearly demonstrates that the Office of the State Attorney acted in good faith by requesting Matthews to voluntarily make the document available for inspection. On May 5, 2010, the office again attempted to contact Mr. Matthews by letter demanding that he voluntarily make the document available for inspection at a time and place coordinated by him or his legal representative. (See Exhibit "C" attached to this answer).

WHEREFORE, the Defendant, Michael J. Satz, request this Honorable Court to:

- A. Enter and Order dismissing the Plaintiff's Complaint or dismissing the Defendant, Michael J. Satz from the Plaintiff's Complaint.
- B. Deny the Plaintiff's request for either a preliminary or permanent injunction directed to Defendant, Michael J. Satz.
- C. Deny Plaintiff's request for attorney's fees and cost for the reasons stated above or during the proceedings.
- D. Grant the Defendant, Michael J. Satz, any other relief as the court may deem appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a copy of the foregoing was furnished by U.S. Mail to Thomas R. Julin Esquire, Attorney for the Plaintiff, Willis Morgan, 1111 Brickell Avenue, Suite 2500, Miami, Florida 33131, Joel Cantor, Esquire, Attorney for Defendant Chief Chadwick E. Wagner, 3250 Hollywood Boulevard, Hollywood, Florida 33021, and to Thomas F. Panza, Esquire, Attorney for Defendant Joseph Matthews, 3600 North Federal Highway, Fort Lauderdale, Florida 33308 this 24th day of June, 2010.

MICHAEL J. SATZ
State Attorney

By: _____
JOEL SILVERSHEIN
Assistant State Attorney
Florida Bar No: 608092
Room 675
201 S.E. 6th Street
Fort Lauderdale, Florida
33301
Telephone: (954)831-7913
Fax: (954)831-6448
e-mail: jsilvershein@sao17.state.fl.us