

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA**

JOEL EDWARD CHANDLER,

Plaintiff,

Case No.: 2015-CA-002074

Section: 07

v.

CITY OF POLK CITY, FLORIDA,

Defendant,

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS
AND FOR FINAL SUMMARY JUDGMENT**

THIS CAUSE is before the Court on Defendant's, CITY OF POLK CITY, FLORIDA, *Motion to Dismiss and for Final Summary Judgment* (hereafter "Motion"), filed July 20, 2015. The Court, having reviewed the Motion, pleadings, applicable statutory and case law, and having heard and considered the arguments of the Parties at a hearing on October 7, 2015, and otherwise being fully informed in the matter, finds as follows:

The Court also reviewed Plaintiff's *Response to Defendant's Motion to Dismiss and for Final Summary Judgment* (hereafter "Response"), filed August 7, 2015; and all *Affidavit(s)* and exhibits in support of Parties' respective Motion and Response, including but not limited to all email correspondence between Plaintiff and Defendant that were relevant to the matter before the Court.

Per the *Verified Complaint to Enforce Florida's Public Records Act* (hereafter "Complaint"), filed June 8, 2015, Plaintiff initiated a public records action against Defendant. In count one, Plaintiff alleged that Defendant unlawfully withheld access to certain public records. In count two, Plaintiff alleged that a certain contract between Defendant and a private entity failed to incorporate an express provision that the contract was subject to the Public Records Act, ch. 119 (2015) (hereafter "express provision").

Per its Motion, regarding count one, Defendant argued that it has responded to all of Plaintiff's public records requests and produced requested documents that were in its possession and identifiable. Defendant argued that it has produced thousands of pages of documents without cost to Plaintiff and communicated with Plaintiff via hundreds of email exchanges. Defendant pointed to only one May 2015 document request that, out of its voluminous production and email exchange, resulted in Defendant not being able to locate a specific document in its possession following Plaintiff's vague request. Plaintiff failed to provide further specification of said document after Defendant requested a more detailed description thereof to assist in its search for said document. Defendant argued that its aforementioned efforts to comply with Plaintiff's public records requests has been in good faith and is not the type of conduct contemplated as an

“unlawful” “refusal” under chapter 119. *See Consumer Rights, LLC v. Union County, Florida*, 159 So. 3d 882 (Fla. 1st DCA 2015).

Second, regarding count two of the Complaint, Defendant argued that Plaintiff’s allegation is moot because Defendant was amending the subject contract between May 18, 2015 and June 15, 2015 to include the express provision before Plaintiff filed the instant action, an amendment that Plaintiff was aware of. Additionally, Defendant argued that the subject contract, even without the express provision, overall contained sufficient language requiring the private entity to comply with chapter 119. *See Pl.’s Compl. Ex. “E,”* at subsecs. 3.4, 9.2, 9.4, & 20) (the subject contract titled “Republic Services FINAL Signed Agreement”).

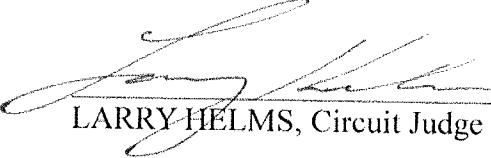
The Court finds no genuine issues of material fact remain regarding the matter before the Court. *See generally Knowles v. JPMorgan Chase Bank*, 994 So. 2d 1218 (Fla. 2d DCA 2008) (Discusses summary judgment standard.).

As to count one of the Complaint, the Court finds no record evidence that Defendant failed to respond to Plaintiff’s public records request as legally required. Defendant acted in good faith to comply with Plaintiff’s public records requests. The Court finds no competent evidence that Defendant unlawfully refused to produce or withheld documentation from Plaintiff.

As to count two of the Complaint, the Court finds that, although the subject contract initially lacked the express provision, there was, otherwise, sufficient language in the overall subject contract requiring the private entity to comply with chapter 119. Furthermore, the Court finds that said amendment to include the express provision in the subject contract was well underway prior to Plaintiff filing this instant action. In fact, said amendment was adopted by Defendant prior to the date of this hearing on Defendant’s Motion. Consequently, the Court finds count two of the Complaint is moot.

Therefore, it is **ORDERED AND ADJUDGED**, pursuant to the Court’s findings and case law referenced above, that Defendant’s, CITY OF POLK CITY, FLORIDA, *Motion to Dismiss and for Final Summary Judgment* is hereby **GRANTED**. The Court reserves jurisdiction of the subject matter and of the Parties for such other purposes as may be necessary and proper.

DONE AND ORDERED in Bartow, Polk County, Florida, on this 10th day of Nov, 2015.


LARRY HELMS, Circuit Judge

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