

IN THE CIRCUIT COURT OF PULASKI COUNTY
CIVIL DIVISION

LEGAL AID OF ARKANSAS, INC.

PETITIONER

v.

Case No. CV-2021-_____

ARKANSAS DEPARTMENT OF
COMMERCE, DIVISION OF
WORKFORCE SERVICES

RESPONDENT

PETITION FOR RELIEF UNDER THE FREEDOM OF INFORMATION ACT

COMES NOW the Petitioner, Legal Aid of Arkansas, Inc., to enforce its right to access public records under the Freedom of Information Act (“FOIA”), codified in A.C.A. § 25-19-101 *et seq.* The Petitioner asserts the following:

PRELIMINARY STATEMENT

1. Since the COVID-19 pandemic started, unemployment rates have soared both nationally and in Arkansas. This has resulted in increased claims for unemployment under both traditional unemployment (“UI”) and the newly-created Pandemic Unemployment Assistance (“PUA”) program. These programs are implemented by the Respondent, the Arkansas Department of Commerce’s Division of Workforce Services (“DWS”). During this time, Legal Aid of Arkansas (“Legal Aid”) has fielded many requests for assistance from claimants having trouble accessing such benefits, including months-long application or appeals processing delays, wrongful denials, unsubstantiated allegations of fraud or overpaid benefits, lack of information about application procedures, and other related problems.

2. To better understand these problems, Legal Aid made an initial request for public information to DWS on October 13, 2020. Legal Aid repeatedly granted extensions on this request beyond the statutory deadline and attempted to work with DWS to narrow its requests while still

obtaining necessary information on DWS's processes—including agreeing to sit down and ask questions directly with DWS officials. Despite these efforts, after almost two months, Legal Aid had received only partially responsive information that does not substantially answer its questions about DWS's processes during the COVID-19 pandemic. When these efforts failed, Legal Aid submitted a second, substantially narrowed request for information on December 8, 2020. Still, over two months later, DWS has refused to provide some responsive records and has refused to provide an anticipated production date for others.

3. In light of DWS's recalcitrance, Legal Aid of Arkansas brings this action to enforce FOIA and to obtain information critical to its ability to serve its client communities.

PARTIES, JURISDICTION, AND VENUE

4. Petitioner is a non-profit corporation organized under the laws of the state of Arkansas with its headquarters based in Jonesboro, Arkansas, and branch offices in Little Rock, Springdale, Rogers, Harrison, Newport, West Memphis, and Helena-West Helena.

5. Petitioner provides free legal services to low-income Arkansans in a variety of civil legal matters, including those relating to the state's unemployment program.

6. Respondent is a state agency and is a custodian of public records to which Petitioner has access pursuant to this state's Freedom of Information Act.

7. This Court has personal jurisdiction over each of the parties.

8. This Court has subject-matter jurisdiction over this matter pursuant to A.C.A. § 25-19-107.

9. Venue is properly in Pulaski County pursuant to A.C.A. § 25-19-107.

THE ARKANSAS FREEDOM OF INFORMATION ACT

10. Except where there is an exception “specifically provided by” Arkansas FOIA law “or by laws specifically enacted to provide otherwise, all public records shall be open to inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.” A.C.A. § 25-19-105(a)(1)(A). “If a public record is in active use or storage and therefore not available at the time a citizen asks to examine it, the custodian shall certify this fact in writing to the applicant and *set a date and hour within three (3) working days at which time the record will be available*” for disclosure. A.C.A. § 25-19-105(e) (emphasis added).

11. Moreover, “[n]o request to inspect, copy, or obtain copies of public records shall be denied on the ground that information exempt from disclosure is commingled with nonexempt information.” A.C.A. § 25-19-105(f)(1). “Any reasonably segregable portion of a record shall be provided after deletion of the exempt information.” A.C.A. § 25-19-105(f)(2). When such redaction is necessary, the custodian of records “shall bear the cost of the separation.” A.C.A. § 25-19-105(f)(4).

12. “Reasonable access to public records and reasonable comforts and facilities for the full exercise of the right to inspect and copy those records shall not be denied to any citizen.” A.C.A. § 25-19-105(d)(1). *See also Swaney v. Tilford*, 320 Ark. 652, 656, 898 S.W.2d 462, 465 (1995) (“We hold that where the records in question are established as ‘public records’ pursuant to A.C.A. § 25–19–103(1) and not otherwise exempted from disclosure, the appropriate governmental agency . . . shall have the responsibility to provide reasonable access for examination and copying of such public records which are in existence at the time of the request, as provided by A.C.A. § 25–19–105.”).

13. Although there is an exception to FOIA disclosure for “[u]ndisclosed investigations by law enforcement agencies of suspected criminal activity”^b this exception is limited to (1) investigatory records, meaning those dealing with detection of crime, created as part of (2) an open and ongoing investigation (3) into suspected criminal activity (4) by law enforcement. A.C.A. § 25-19-105(b)(6). *See also Martin v. Musteen*, 303 Ark. 656, 660, 799 S.W.2d 540, 542 (1990) (“[T]he general assembly meant [for A.C.A. § 25-19-105(b)(6)] to protect *ongoing criminal investigations* being conducted by law enforcement agencies.”); *Johninson v. Stodola*, 316 Ark. 423, 426, 872 S.W.2d, 374 375 (1994) (holding that “investigatory records” subject to exemption under A.C.A. § 25-19-105(b)(6) are limited to “records dealing with the detection of crime”).

14. Circuit courts, not custodians of records, are charged with examining records to determine whether they fall under this exception, and it is the custodian’s burden to establish that withheld records fall under this exception. *See Gannett River States Pub. Co. v. Arkansas Indus. Dev. Comm’n*, 303 Ark. 684, 690, 799 S.W.2d 543, 547 (1990) (“The trial court must ultimately decide whether the agency has met its burden of proving that the records are exempt from disclosure.”).

BACKGROUND ON UNRESOLVED FOIA REQUESTS

15. Legal Aid has submitted two FOIA requests to DWS which form the basis of this suit per A.C.A. § 25-19-101 *et seq.* The first such FOIA request, dated October 13, 2020, (“First Request”) is incorporated and attached hereto as Exhibit 1. The second such FOIA request, dated December 8, 2020, (“Second Request”) is incorporated and attached hereto as Exhibit 2. These requests were designed to elicit information about how DWS has implemented its changes to unemployment programs during the COVID-19 pandemic.

16. Legal Aid brings this suit specifically based on DWS's incomplete responses to the following items from the Second Request:

- Item 1: All reports generated and/or produced for DWS by ProTech Solutions LLC ("ProTech") pertaining to the services it provides to DWS, including, but not limited to, all "weekly status reports", "monthly status reports", and reports requested by DWS per the terms of DWS' contract with ProTech (i.e. "ad-hoc reports" for "statistical and auditing purposes");
- Item 4: All training materials provided by either ProTech or DWS to employees of ProTech pertaining to the services it provides to DWS;
- Item 9: All policies, directives, rules, business process documents, change requests, or other materials provided by DWS to ProTech directing how PUA eligibility determinations or recommendations are to be made; and
- Item 10: All public records, including communications, created by, sent by, sent to, or otherwise provided to DWS employees between March 1, 2020, and present that contain the words "algo" or "algorithm" in singular or plural form. *See Exhibit 2.*

17. Between October 13, 2020, and January 19, 2020, Legal Aid and DWS communicated about these requests through multiple email threads. Those emails relevant to this claim are incorporated and attached hereto as Exhibit 3.

Relationship Between Respondent and Protech Solutions, LLC Relevant to FOIA Requests

18. Many of the Items in Legal Aid's FOIA Requests sought information regarding the relationship between DWS and the vendor ProTech Solutions, LLC ("ProTech").

19. DWS contracts with ProTech to provide a "comprehensive web-based intake application process for citizens of Arkansas to apply for PUA by entering their information." This agreement ("Protech Contract") is incorporated and attached hereto as Exhibit 5. *See Exhibit 5, p. 1.*

20. Under the terms of the contract, ProTech's algorithm, or "solution", "determine[s] eligibility for a weekly based amount ('WBA') under the PUA program and provides this

information to the DWS existing regular unemployment insurance system for disbursement.” The contract also requires that ProTech provide estimates for additional potential services, including a “customer support call center for user assistance for the PUA program” and “[a]dditional functionality to disburse weekly funds to claimants.” *See* Exhibit 5, p. 2.

21. The Protech Contract requires that Protech must provide three types of reports to DWS: (1) “[w]eekly status reports” with specific required information; (2) “monthly reports . . . to address performance standards”; and, as requested, (3) “ad-hoc reports, acceptable to the State, for statistical auditing purposes”. *See* Exhibit 5, p. 4, 10.

Non-response on Item 1 of Petitioner’s Second Request

22. As of the time of filing, Legal Aid has not received any materials responsive to Item 1 of its Second Request, which sought all reports produced by ProTech for DWS in relation to the services it provides. *See* Exhibit 2, p. 1.

23. DWS Associate General Counsel Sherry Seiffert (“Seiffert”) first asserted on December 11, 2020, that the records responsive to Item 1 required review for claimant information and redaction prior to production. *See* Exhibit 3, p. 34. However, Item 1 did not request materials that include claimant information. *See* Exhibit 2.

24. Then, on December 21, 2020, Seiffert instead refused to provide any materials responsive to Item 1 on the following basis:

Please be advised that pursuant to an ongoing federal investigation, ADWS is not able to release any documentation regarding ProTech (i.e., reports generated and/or produced by ProTech) from the time period of April 27, 2020 through the present date. . . . “The [sic] Department of Commerce is cooperating with the FBI on its investigation into the recent data security incident. . . . Due to this investigation, we are limited in the information that we can share at this time.”

See Exhibit 3, p. 46.

25. Legal Aid Staff Attorney Jaden Atkins (“Atkins”) has since requested clarification sufficient to meet DWS’s burden in establishing that it meets the criminal investigation exception to disclosure five times—most recently on January 19, 2021. *See* Exhibit 3, p. 37, 39–40, 41, 42–43, 45. As of the time of filing, Legal Aid has not received this requested clarification, and DWS General Counsel Don Denton (“Denton”) has since expressed lack of certainty as to whether some of these materials are, in fact, subject to disclosure. *See* Exhibit 3, p. 39–40.

26. As of the date of this filing, Legal Aid has not received any responsive materials to Item 1; nor has Legal received an anticipated production date or any form of a timeline for production of these records.

Non-response on Item 10 of Petitioner’s Second Request

27. As of the time of filing, Legal Aid has not received any materials responsive to Item 10 of its Second Request, which sought all public records created by, sent by, sent to, or otherwise provided to DWS employees between March 1, 2020, and present that contain the words “algo” or “algorithm” in singular or plural form.

28. DWS has publicly admitted that it is using algorithms in the benefit determination process. *See* Benjamin Hardy, *Thousands of Unemployment Claims Remain Locked By The State*, KUAR (Nov. 9, 2020), <https://www.ualrpublicradio.org/post/thousands-unemployment-claims-remain-locked-state> (providing a statement on DWS’s use of algorithms from DWS Spokeswoman Zoë Calkins).

29. On December 11, 2020, the third working day after Petitioner submitted its Second Request, Seiffert claimed that DWS was “not able to provide [Legal Aid] with an anticipated response time” because she did not know how many records her search request would return and require review for claimant information. *See* Exhibit 3, p. 34.

30. On December 15, 2020, Atkins objected to DWS’s failure to provide an anticipated production date in accordance with A.C.A. § 25-19-105(e). *See* Exhibit 3, p. 33.

31. In response, on December 18, Denton acknowledged that DWS had finished running its queries for records responsive to Item 10, but he once again refused to provide an anticipated production date. *See* Exhibit 3, p. 32.

32. On December 22, 2020, Atkins requested that DWS provide a timeline for its production of the records requested in Item 10 of its Second Request, “*based on [its] current expectations for staff and technology availability.*” *See* Exhibit 3, p. 45 (emphasis added). Atkins has since repeated or referred to this request four times—most recently on January 19, 2021. *See* Exhibit 3, p. 37, 38, 39–40, 41.

33. Still, as of the date of this filing, Legal Aid has not received *any* responsive materials to Item 10; nor has Legal received an anticipated production date or any form of a timeline for production of these records.

Incomplete Responses to Item 4 and Item 9 of Petitioner’s Second Request

34. Item 4 and Item 9 of Legal Aid’s Second Request are similar in nature as each sought to obtain documentation, including training materials, policies, and directives from DWS on how it has instructed ProTech to carry out its contractual obligations for the PUA program.

35. In a December 9, 2020 email, Seiffert noted that there were “no known responsive documents relating to” Item 4 of the Second Request. *See* Exhibit 3, p. 26-27.

36. In response to Item 9, Seiffert only referenced a URL for a program letter from the U.S. Department of Labor. *See* Exhibit 3, p. 26–27.

37. In the same email, Seiffert refused to provide additional materials responsive to Item 6 of the Second Request on the grounds that the responsive records were “proprietary in

nature and may not be released.” *See* Exhibit 3, p. 26–27. Item 6 of the Second Request sought the same information necessary for a vendor to carry out its contractual duties as Item 4 did. *See* Exhibit 2.

38. In response, Atkins expressed concern that DWS objected solely to Item 6 despite equivalent language in Item 4—particularly given that no responsive materials were provided for Item 4—and requested that DWS notify Legal Aid immediately if DWS had withheld materials responsive to Item 4 for any reason. *See* Exhibit 3, p. 33.

39. In his response to Atkins’s email, Denton failed to address whether materials were being withheld in response to Item 4, however he did identify a material that he had not previously provided in response to an unspecified portion of the Second Request. *See* Exhibit 3, p. 32.

40. On December 23, 2020, Seiffert indicated that, to her knowledge, the only outstanding requests were Items 1 and 10. *See* Exhibit 3, p. 43–44.

BACKGROUND ON PETITIONER’S ATTEMPTS TO WORK WITH RESPONDENT ON PRODUCTION OF FOIA REQUESTS

41. Prior to filing this lawsuit, Legal Aid worked extensively—and unsuccessfully—over four months to obtain the information it requested while accommodating DWS’s stated limitations, including agreeing to a sit-down meeting to answer Legal Aid’s substantive questions and providing extensions when requested.

First FOIA Request Responses

42. On October 13, 2020, Atkins submitted Legal Aid’s First Request to DWS in an attempt to gain necessary information on how DWS was implementing changes to its unemployment programs during the COVID-19 pandemic. *See* Exhibit 3, p. 5.

43. Later, on October 13, 2020, DWS Associate General Counsel Cindy Uhrynowycz (“Uhrynowycz”) called Atkins over the phone and requested an extension on fulfilling the First

Request to November “6th or 9th”, 2020, followed by an email requesting the same. *See* Exhibit 3, p. 3. Atkins granted an extension to November 6, 2020, requesting notification if DWS would no longer be able to make the set deadline and that, in the meantime, any documents that did not require review and redaction be sent as soon as possible. *See* Exhibit 3, p. 2–3.

44. Legal Aid heard nothing further as to its First Request until October 30, 2020, after Atkins requested an update. *See* Exhibit 3, p. 2. Uhryonwycz responded that she had referred Petitioner’s email to Denton. *See* Exhibit 3, p. 1.

45. On November 4, 2020, Denton provided a “partial” response to the First Request, but he did not specify which documents corresponded to which Item of the First Request. *See* Exhibit 3, p. 7. These documents were largely unhelpful in answering Legal Aid’s questions regarding DWS processes during the COVID-19 pandemic.

46. Later, on November 4, 2020, Denton stated that he would provide additional responsive materials by November 6, 2020, “as there should be no or little redactions involved.” *See* Exhibit 3, p. 12–13. Respondent never provided these materials.

47. DWS did provide vendor contracts responsive to Item 5 of the First Request on November 19, 2020, but this was only done after Atkins made another request for them on November 13, 2020. *See* Exhibit 3, p. 15, 19–20.

48. Petitioner received no further materials responsive to its First Request.

Attempts to Further Limit Scope of the First Request, including Meeting to Discuss Processes

49. Legal Aid attempted to work with DWS to limit the scope of and need for its First Request, including agreeing to a sit-down meeting to discuss substantive program information.

50. On November 3, 2020, Atkins emailed Denton, requesting an update on the First Request. *See* Exhibit 3, p. 1. Denton called Atkins and suggested a “sit down” meeting to narrow

the First Request. Denton followed this call with an email to Atkins on November 4, 2020. *See* Exhibit 3, p. 6–9.

51. On November 4, 2020, Atkins made two suggestions to further narrow the First Request. *See* Exhibit 3, p. 12.

52. On November 6, 2020, Denton replied that he would look into Atkins’s suggestions, but he did not follow up. He assigned Seiffert to work on the First Request. He additionally discussed search terms related to the request and noted that “[i]f need be, [DWS was] willing to have a conference call with [Legal Aid] to work on this further.” *See* Exhibit 3, p. 10–11.

53. On November 13, 2020, Atkins emailed Denton, requesting to set up a meeting as Denton had suggested to narrow the First Request, specifically requesting that the meeting include DWS workers “who are able to answer our questions about the UI and PUA eligibility and overpayment determination processes” such that Legal Aid “may be able to bypass a great deal of document collection to determine those processes.”

54. On November 17, 2020, Denton emailed Atkins, saying that Seiffert would set up a meeting with the DWS workers necessary to answer Legal Aid’s questions. *See* Exhibit 3, p. 14.

55. After Atkins inquired twice about scheduling DWS’s proposed meeting, Seiffert informed her on November 25, 2020, that DWS could not “accommodate” the meeting even though it “had anticipated” doing so. *See* Exhibit 3, p. 16, 17, 19.

56. Between November 25, 2020, and December 8, 2020, Legal Aid did not receive any further communication from DWS regarding the outstanding materials in its First Request.

Second FOIA Request and Clarification

57. Because Legal Aid received incomplete responses to its First Request and was refused the meeting to discuss the substantive information sought, Atkins submitted a narrowed Second Request on December 8, 2020. *See* Exhibit 3, p. 24.

58. Legal Aid limited its request to records containing information about general processes employed by DWS's fraud unit and third-party vendors and incorporated Denton's November 6, 2020, suggestion as to search terms, focusing its efforts on records least likely to require redaction. *See* Exhibit 2. *See also* Exhibit 3, p. 10–11.

59. In response, Seiffert claimed that “[i]t will take some time to gather said information” and suggested a meeting to narrow the scope of the request. *See* Exhibit 3, p. 23, 26.

60. Legal Aid responded in a December 10, 2020, letter, which is incorporated and attached hereto as Exhibit 4, stating that the Second Request was already narrowed as much as was feasible for the information sought and further clarified that it only sought information from “March 1, 2020 to present” for Item 1. *See* Exhibit 3, p. 27–28. *See also* Exhibit 4.

61. Atkins followed up this letter five days later with another request for an anticipated production date, to which Denton responded that Legal Aid had shown “patience” in its attempts to work with DWS, but once again passed on the opportunity to provide an anticipated production date. *See* Exhibit 3, p. 32–33.

62. Atkins last sought an update from DWS on January 19, 2021, but neither Denton nor Seiffert have responded as of the time of filing. *See* Exhibit 3, p. 37.

COUNT ONE: VIOLATION OF FOIA IN FAILURE TO PROVIDE DOCUMENTS
RESPONSIVE TO ITEM 1 OF PETITIONER'S SECOND REQUEST

63. The Petitioner adopts and incorporates the foregoing paragraphs.

64. Legal Aid has not received any records responsive to Item 1 of its Second Request, submitted on December 8, 2020.

65. The reports requested in Item 1 are specifically referenced in the Protech Contract. *See* ¶ 21. *See also* Exhibit 2, p. 1. These reports reflect official functions of DWS, a state agency, that are delegated to a third-party vendor (Protech), including the creation, operation, and management of DWS’s PUA program, which accepts applications and documentation from claimants and makes initial determinations of eligibility based on information provided. *See* ¶ 18-21. Thus, the reports requested Item 1 of Legal Aid’s Second Request are “public records” subject to FOIA disclosure under A.C.A. § 25-19-103 (7)(A).

66. DWS has asserted that all responsive records to Item 1 of the Second Request are excepted from disclosure due to an “ongoing federal investigation.” *See* ¶ 24. Despite repeated requests, DWS has declined to provide any further explanation and documentation to support this claim. *See* ¶ 25. The information thus far provided to Legal Aid on the application of A.C.A. § 25-19-105 (b)(6) to the requested records does not meet DWS’s burden to provide sufficient proof for this claim:

a. First, DWS has not provided explanation or documentation to support the claim that there is an ongoing investigation.

b. Second, DWS has not established that the “investigation” involves suspected criminal activity sufficient to qualify for the exemption. Although DWS noted that the alleged investigation is of a “recent data security incident”, the agency has not claimed that this is a criminal investigation.

c. Third, DWS has not established that the contractually obligated reports requested under Item 1 are “records dealing with the detection of crime” such that they are

“investigatory records” exempt from FOIA disclosure. On information and belief subject to confirmation after a reasonable opportunity for discovery, these reports were required and, for at least some reports, produced prior to any alleged investigation began and, therefore, were not created for the purpose of investigating suspected criminal activity. Thus, they are not subject to exclusion under A.C.A. § 25-19-105 (b)(6).

d. Fourth, DWS has not identified the specific responsive records that are being withheld as requested under the Second Request. Thus, Respondent holds the information necessary to determine whether all or some of the records responsive to Item 1 of Petitioner’s Second Request fall under this exception.

See ¶ 13-14. See also ¶ 24.

67. Accordingly, the records responsive to Item 1 are subject to disclosure, and DWS has surpassed the statutorily allowed three (3) working days under A.C.A. § 25-19-105(e) to provide these records. These actions of DWS’s employees go beyond their authority under Arkansas law and constitute *ultra vires* action on behalf of DWS.

68. This Court is empowered to enjoin *ultra vires* state agency action. *Arkansas Game & Fish Comm'n v. Heslep*, 2019 Ark. 226, 6, 577 S.W.3d 1, 5 (2019) (holding that “a suit against the agency or officer is not prohibited if the state agency is acting illegally and that a state agency or officer may be enjoined from acting arbitrarily, capriciously, in bad faith, or in a wantonly injurious manner”).

COUNT TWO: VIOLATION OF FOIA IN FAILURE TO PROVIDE DOCUMENTS
RESPONSIVE TO ITEMS 4 AND 9 OF PETITIONER’S SECOND REQUEST

69. The Petitioner adopts and incorporates the foregoing paragraphs.

70. DWS has alleged that no records exist which are responsive to Item 4 of the Second Request and, accordingly, has not provided any such records as of the time of filing. See ¶ 35.

71. In response to Item 9, DWS has provided only one item: a program letter from the U.S. Department of Labor, UIPL 16-20, and its updates. UIPLs are policy letters from the U.S. government and are readily available online. *See* ¶ 36.

72. ProTech would be unable to carry out its contractual functions without further information from DWS encompassed by Item 4 and Item 9. *See* Exhibit 2. Thus, on information and belief subject to discovery, DWS is withholding records in its possession responsive to Items 4 and 9.

73. The requested materials in Items 4 and 9 of the Second Request reflect how Protech will carry out official functions of DWS and, as such, are “public records” subject to FOIA disclosure under A.C.A. § 25-19-103 (7)(A).

74. DWS has not met its burden in establishing that any records responsive to either Item 4 or Item 9 of the Second Request which have been withheld from Legal Aid are exempt from disclosure under A.C.A. § 25-19-105 (b)(6) on the same bases outlined in Count One. *See* ¶ 65-67.

75. Moreover, DWS holds the information necessary to determine whether it has withheld records responsive to either Item 4 or 9 and, if so, whether such records fall under an exception to disclosure.

76. Thus, to the extent that further responsive records to either Item 4 or Item 9 exist and are being withheld on any basis, these records are also subject to FOIA disclosure, and DWS has surpassed the statutorily allowed three (3) working days A.C.A. § 25-19-105 (e) to provide these records. These actions of DWS’s employees go beyond their authority under Arkansas FOIA law and constitute *ultra vires* action on behalf of DWS.

COUNT THREE: VIOLATION OF FOIA IN FAILURE TO PROVIDE DOCUMENTS
RESPONSIVE TO ITEM 10 OF PETITIONER’S SECOND REQUEST

77. The Petitioner adopts and incorporates the foregoing paragraphs.

78. Legal Aid has not received any records responsive to Item 10 of its Second Request, submitted on December 8, 2020.

79. These records are “public records” subject to FOIA disclosure under A.C.A. § 25-19-103 (7)(A).

80. DWS compiled the requested records on or before December 18, 2020. *See* ¶ 31.

81. DWS claims that these records may contain confidential information protected under A.C.A. § 11-10-314 and, therefore, require review and redaction prior to disclosure. *See* ¶ 29.

82. Legal Aid, with input from DWS General Counsel, narrowed the search terms in Item 10 so that it should not require extensive review for claimant information sufficient to exceed the statutorily allowed three (3) working days per A.C.A. § 25-19-105 (e). *See* ¶ 58.

83. To the extent review is required, DWS has still failed to provide “reasonable access” to these records for the following reasons:

- a. After over two months, Legal Aid has not received any responsive materials for Item 10. Thus, DWS is either not providing materials as they are redacted or not actively redacting these materials for production *at all*.
- b. Although Legal Aid has requested an anticipated production date multiple times, DWS has failed to provide one or explain why such a date cannot be determined. *See* ¶ 32.

84. Thus, these actions of DWS’s employees go beyond their authority under Arkansas FOIA law and constitute *ultra vires* action on behalf of DWS.

WHEREFORE, the Petitioner prays that the Court (1) schedule a hearing on this matter within 7 days of the date this Petition is filed, as provided in A.C.A. § 25-19-107(b); (2) order the Respondent to produce within 2 business days of the hearing the information requested in Items 1, 4, and 9 of Petitioner's Second Request; (3) order the Respondent to produce within 10 business days of the hearing the information requested in Item 10 of Petitioner's Second Request; (4) order the Respondent to provide detailed explanations for any item in the Second Request to which it does not have fully responsive information, with such explanation specifying the information that it has available to it that may relate to the Petitioner's request; and (5) for all other just relief.

DATED: February 18, 2021

Respectfully Submitted,

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