

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA**

CAIR FLORIDA, INC.,

Petitioner

vs.

CIVIL DIVISION, CASE NO.

CHRISTOPHER NOCCO, SHERIFF OF
PASCO COUNTY, in his official capacity,

Respondent.

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PETITION FOR WRIT OF MANDAMUS

Pursuant to Art. I, § 24, Fla. Const., § 119.07, *et seq.*, Fla. Stat. (2022), and, Fla. R. Civ. P. 1.630, Petitioner COUNCIL ON AMERICAN-ISLAMIC RELATIONS FLORIDA, INC. (“CAIR-FL”) brings this action against Respondent CHRISTOPHER NOCCO, SHERIFF OF PASCO COUNTY, in his official capacity, for issuance of a Writ of Mandamus to enforce its rights under the Public Records Act.

INTRODUCTION

1. Sheriff Nocco has failed to fulfill his nondiscretionary duty under the Public Records Act by refusing to disclose records revealing demographic information about his Predictive Policing Program—records that are responsive to three requests made by CAIR-FL. Sheriff Nocco has attempted to justify this refusal by citing inapplicable statutory exemptions to the ordinary duty of disclosure. Moreover, even if one or more of these exemptions were applicable to some portion of the requested records, Sheriff Nocco has failed to redact the portions of the requested records that are allegedly subject to statutory exemption(s) and to produce the remainder of the records, as the Public Records Act requires. CAIR-FL brings this action to compel Sheriff Nocco to follow the law and produce the requested records.

PARTIES

2. Petitioner CAIR-FL is a 501(c)(3), Florida not-for-profit corporation established in 2000. CAIR-FL is a civil rights advocacy organization, has five offices, and conducts its work throughout the State of Florida, including Pasco County.

3. Respondent CHRISOPHER NOCCO, as the elected Sheriff of Pasco County, is responsible for maintaining the Pasco County Sheriff's Office ("the PSO") and is the custodian of the PSO's public records, as defined by § 119.011(5), Fla. Stat. (2022). He is sued in his official capacity.

4. The PSO is headquartered in Pasco County and is an agency subject to Chapter 119 of the Florida Public Records Act.

JURISDICTION AND VENUE

5. Jurisdiction is conferred on this Court by Ch. 119, Fla. Stat. (2022), and § 86.011 Fla. Stat. (2022).

6. Venue is proper in the Sixth Judicial Circuit Court of Florida because a substantial part of the events or omissions giving rise to the claim accrued in the Circuit.

FACTUAL ALLEGATIONS

PSO's Predictive Policing Programs

7. Under Sheriff Nocco's direction, the PSO created the Predictive Policing Program (also known as the "Intelligence-Led Policing Program"). (*See* Ex. 1, Pasco County Sheriff, Intelligence Led Policing Manual (Jan. 2018) (hereinafter "ILP Manual")).

8. The Predictive Policing Program "attempts to eliminate crime before it happens" by focusing on "problem people, problem places, and problem groups." *Id.* at 9-10.

9. The Predictive Policing Program encompasses a range of purportedly data-driven policing programs, policies and strategies, including the Prolific Offender program and the At-

Risk Youth program. (*Id.* at 17-21, 71-74,76; *see also* Ex. 2, Letter from Pasco Sheriff's Office on 2021 Prolific Offender Notification (received July 12, 2021)).

10. Both the Prolific Offender program and the At-Risk Youth program rely upon algorithmic risk assessment tools that purportedly enable the PSO to predict which residents are most likely to commit, or be victimized by, *future* criminal offenses. (Ex. 1, at 71-76).

PSO's Prolific Offender Program

11. The Prolific Offender program is a predictive policing program that scores individuals based on criteria including their: (1) three-year history of any arrests and suspicions for criminal offense in Pasco County (irrespective of the outcome of those arrests, the baselessness of those suspicions or the race biases embedded in both); (2) any violations of parole; (3) failure to appear in court; (4) length of time between any offenses; (5) any repeated inclusions in criminal incident reports—notably, *as either a victim, witness, or person with any other involvement*; and (6) any *alleged*—but not necessarily confirmed—gang affiliation. (Ex. 1, at 76).

12. Individuals who meet the preliminary criteria for inclusion constitute the Prolific Offender Pool. Sheriff Nocco has previously stated that, in a single reporting period, approximately 1,800 individuals make up the Pool. (Ex. 3, July 24, 2020, Letter from Pasco Sherriff's Office to Neil Bedi, Journalist, Tampa Bay Times, at 3).

13. After developing the Prolific Offender Pool, the PSO then identifies the Top 100 individuals from among the Prolific Offender Pool to place onto the Prolific Offender List. *Id.* at 1.

14. Upon selection for the Prolific Offender List, individuals are subjected to PSO's Prolific Offender Program for a minimum of two years, during which PSO law enforcement officers conduct persistent and intrusive monitoring of them. The stated aim of the program is to make the individual "feel the pressure" (Ex. 1, at 19) through "increased accountability." (Ex. 2,

at 1; *see also*, Pasco County Sheriff's Office, *Introduction Video*, YouTube (Jan. 7, 2021), <https://www.youtube.com/watch?v=T17nnG6IOPs&t=6s>).

PSO's At-Risk Youth Program

15. The PSO also operates an "At-Risk Youth" program, which is a related but independent program that conducts algorithmic risk assessments of minors based upon data from the Pasco County School District and the Florida Department of Children and Families. (Ex. 1, at 14).

16. This risk assessment tool assigns scores to a student's academic performance, school discipline records, histories of childhood trauma, and involvement with local law enforcement and, based on an assessment of these scores, places middle and high school students on the At-Risk Youth List, alternatively referred to as the At-Risk Target List. (Ex. 1, at 71-74); *see also* Kathleen McGrory & Neil Bedi, *Pasco's sheriff uses grades and abuse histories to label schoolchildren potential criminals*, Tampa Bay Times, (Nov. 19, 2020) <https://projects.tampabay.com/projects/2020/investigations/police-pasco-sheriff-targeted/school-data/>).

CAIR-FL's Public Records Requests

17. On or about April 11, 2021, CAIR-FL submitted 59 public records requests to the PSO pursuant to Chapter 119, Florida Statutes (the "Public Records Act"), and Article 1, Section 24 of the Florida Constitution. (Ex. 4; Ex. 5, at 29).

18. On June 26, 2021, CAIR-FL submitted supplemental public records requests #60-#63, and revised Request #13. (Ex. 5, at 7-9). CAIR-FL has engaged in extensive, good faith correspondence with the PSO to resolve the requests for public records. (Ex. 5). Only Requests #13, #18, and #60 are at issue in this petition. In response to those requests, Sherriff Nocco has

repeatedly asserted that the requests are exempt under state and federal statute or would otherwise require the creation of a new record.

19. On August 31, 2021, CAIR-FL sent a letter to the PSO informing it of its failure to state with particularity the bases for all stated exemptions and requesting that the PSO prioritize producing records responsive to Requests #13, #18 and #60. (Ex. 6). On September 8, 2021, the PSO responded with a letter addressing Requests #13, #18, and #60 for the de-identified and disaggregated records from the Prolific Offender List, Prolific Offender Pool, and At-Risk Youth and At-Risk Target Lists. (Ex. 7). In this letter, PSO claimed that fulfilling these records requests would require the agency to create a new record, which the PSO states it is not mandated to do. *Id.* The PSO additionally asserted exemptions to disclosure for Requests #13 and #18, as detailed in paragraphs 23 and 27 below.

20. On September 24, 2021, the PSO raised, for the first time since receiving CAIR-FL's April 11, 2021 Records Request, purported exemptions to disclosure of documents responsive to Request #60, as detailed in paragraph 32 below.

21. As of the filing of this petition, Sheriff Nocco and the PSO have not provided responsive records to Requests #13, #18 and #60, nor have they complied with the statutory duty to redact any exempt portion and produce the remainder of such record for inspection and copying.

22. While refusing to provide comprehensive de-identified demographic information about the lists overall, Sheriff Nocco has simultaneously produced to CAIR-FL responsive information related to some individuals on the At-Risk Youth List ("contact sheets" about minors on the At-Risk Youth list created by School Resource Officers). (Ex. 5, at 1-2). He also previously provided a list of more than 1000 names of people on the Prolific Offender List, including minors, to the Tampa Bay Times. (*See Read the Pasco Sheriff's Office response to our investigation*, Tampa Bay Times, (Sept. 3, 2020)

<https://projects.tampabay.com/projects/2020/investigations/police-pasco-sheriff-targeted/sheriffs-response/>).

Request #13: De-identified and Disaggregated Data for the Prolific Offender Lists

23. Request #13 sought the following:

For the Prolific Offender list, deidentified and disaggregated data as follows:

A. Rows: Each row should reflect each of the deidentified individuals on the Prolific Offender List.

B. Columns (for each person listed in the rows above):

- i. Case numbers.
- ii. Felony or misdemeanor levels.
- iii. Race.
- iv. Ethnicity.
- v. National origin.
- vi. Age.
- vii. Gender.
- viii. Disability type.
- ix. Zip code of their last-known residence.
- x. Prolific offender calculation scoring broken down by criminal history and enhancements.
- xi. Arrest forms for each of the District Targets apprehended from January 1, 2011, to the present.

24. On May 31, 2021, Sheriff Nocco claimed three exemptions to disclosure of documents responsive to Request #13: (1) Active criminal intelligence information; (2) active criminal investigative information; and (3) surveillance techniques or procedures or personnel. (Ex. 5, at 9).

25. PSO did not reassert the surveillance techniques or procedures or personnel exemption to Request #13 in communications with CAIR-FL on September 8, September 14, or September 24, and instead only asserted the active criminal investigative and active intelligence information exemptions. (Ex's. 7; 8; 9).

26. To date, it has not provided further explanation for its refusal to respond to the request or explained how its refusal is consistent with its prior production of the names of people on the Prolific Offender List.

Request #18: Deidentified and Disaggregated Data for the Prolific Offender Pool

27. Request #18 sought the following:

For the prolific offender pool, deidentified and disaggregated data listing: race, ethnicity, national origin, age, gender, disability, zip code of their last-known residence, and prolific offender calculation scoring, broken down by criminal history and enhancements.
(Ex. 4 at 3).

28. On May 31, 2021, PSO claimed two exemptions to disclosure under Florida Statute Chapter 119: (1) Active criminal intelligence information; and (2) active criminal investigative information. (Ex. 5, at 20).

29. On October 7, 2012, CAIR-FL again requested that the PSO provide redacted records responsive to Request #18. (Ex. 10, at 2). CAIR-FL clarified that its request was for all responsive information, no matter the format of the information. *Id.*

30. To date, Sherriff Nocco has not produced any records responsive to Request #18, nor has he complied with his statutory duty to redact any exempt portion and produce the remainder of such record for inspection and copying.

Request #60: Deidentified & Disaggregated Data for At-Risk Target & At-Risk Youth

Lists

31. Request #60 sought the following:

For the At-Risk Target List(s) or At-Risk Youth List(s), deidentified and disaggregated data as follows:

A. Rows: Each row should reflect each of the deidentified individuals on the At-Risk Targets List(s) or At-Risk Youth List(s).

B. Columns (for each person listed in the rows above):

- (i) Case numbers.
- (ii) Felony or misdemeanor levels.
- (iii) Race.
- (iv) Ethnicity.
- (v) National origin.
- (vi) Age or DOB.
- (vii) Gender.
- (viii) Disability type.
- (ix) Zip code of their last-known residence.
- (x) Scoring broken down by criminal history and enhancements.
- (xi) School name.
- (xii) Educational risk factors score, broken down by course performance, GPA, credits, attendance, office discipline referrals, and overall scoring.
- (xiii) Criminogenic risk factors score, broken down by age of onset, crime type, number of convictions, drug or alcohol, lack of parental supervision (Truancy, curfew, 22J), victim of personal crime, delinquent friends, history of running away, custody disputes, certified gang member, and overall scoring.
- (xiv) Adverse childhood experiences, broken down by household member, incarceration, physical abuse, emotional abuse, witness household violence, physical neglect, household substance abuse, sexual abuse, and overall scoring.

(Ex. 5 at 8).

32. On September 24, 2021, the PSO raised purported exemptions to disclosure of documents responsive to Request #60. (Ex. 9, at 26). The PSO's response failed to state with particularity the basis for each exemption as required by § 119.071(f), Fla. Stat. (2022). The asserted exemptions to Request #60 are:

- i. 20 U.S.C. § 1232g (Family Educational Rights and Privacy Act ("FERPA"));
- ii. 34 C.F.R. Part 99 (FERPA regulations);
- iii. § 1002.221(1), Fla. Stat. (2022) (Florida state educational privacy statute);
- iv. § 1003.53(6), Fla. Stat. (2022) (Public Records exemption for certain records of "dropout prevention programs");

- v. § 119.071(3)(a), Fla. Stat. (2022) (Public Records exemption for firesafety and security information);
- vi. § 985.04(1)(a), Fla. Stat. (2022) (Public Records exemption for certain information systems on juvenile criminal records);
- vii. § 943.053(3)(b), Fla. Stat. (2022) (Public Records exemption for juvenile criminal history information compiled by the Criminal Justice Information Program);
- viii. § 985.047(2)(a), Fla. Stat. (2022) (Public Records exemption for certain centrally compiled records concerning habitual juvenile offenders or juveniles at risk of becoming habitual offenders); and
- ix. Marsy's Law, Art. 1, § 16(5), Fla. Const. (Public Records Act exemption for information concerning crime victims).

33. Sheriff Nocco has not asserted that the information sought in Request #60 was exempt from disclosure under the active criminal investigative and active criminal intelligence exemptions as claimed in response to Requests #13 and #18. *Id.* To date, Sheriff Nocco has not produced any records responsive to Request #60, nor has he complied with his statutory duty as the records custodian for the PSO to redact any exempt portion and produce the remainder of such record for inspection and copying.

ARGUMENT

Sheriff Nocco has failed to perform his mandatory duties by refusing to produce records related to the Prolific Offender Data, Prolific Offender Pool and At-Risk Youth Lists. A Writ of Mandamus is warranted because none of the alleged justifications provided for withholding the requested records are valid. Moreover, even if an exemption applied, Sheriff Nocco has failed to

redact any exempt data and produce the remaining data responsive to the Requests, as required by law.

I. PETITIONER CAIR-FL HAS A CLEAR LEGAL RIGHT TO INSPECT THE REQUESTED RECORDS.

“A party petitioning for a writ of mandamus must establish a clear legal right to performance of the act requested, an indisputable legal duty, and no adequate remedy at law.” *Smith v. State*, 696 So. 2d, 814, 815 (Fla. 2d DCA 1997). For purposes of mandamus relief under the public records act, disclosure of public records is a mandatory, nondiscretionary act. *Id.* at 816; *see also Mills v. Doyle*, 407 So. 2d 348, 350 (Fla. 4th DCA 1981).

Florida’s Public Records Act declares in unequivocal terms that “[i]t is the policy of this state that all state, county, and municipal records are open for a personal inspection and copying by any person.” § 119.01(1), Fla. Stat. (2022). “Public records” are: “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” §119.011(12), Fla. Stat. (2022). The documents that CAIR-FL requests are public records, as they are created by a public agency – namely, the PSO. *See Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980). Unless a valid exemption exists, the documents must be open to inspection. There exists no other adequate remedy at law for CAIR-FL to timely inspect the requested public records. *See Chandler v. City of Greenacres*, 140 So. 3d 1080, 1083 (Fla. 4th DCA 2014) (citation omitted),

As demonstrated below, CAIR-FL has met the prima facie requirements for the issuance of a writ of mandamus, and Petitioner requests that the Court issue an alternative writ of mandamus

pursuant to Fla. R. Civ. P. 1.630(d)(2), directing Sheriff Nocco to immediately show cause as to why the requested relief should not be granted.

II. RESPONDENT SHERIFF NOCCO HAS FAILED TO COMPLY WITH HIS MANDATORY DUTY TO PRODUCE THE REQUESTED PUBLIC RECORDS.

The Public Records Act requires that “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under the supervision by the custodian of the public records.” § 119.07(1)(a), Fla. Stat. (2022). As custodian of PSO records, Sheriff Nocco has a legal obligation to provide access to public records within the PSO’s custody. Though the legislature has created statutory exemptions to disclosure in certain limited contexts, there is a presumption of disclosure, and exemptions to disclosure are to be applied narrowly. *See Nat’l Collegiate Athletic Ass’n v. Associated Press*, 18 So. 3d 1201, 1206 (Fla. 1st DCA 2009), *rev. denied*, 37 So. 3d 848 (Fla. 2010).

Sheriff Nocco bears the burden of establishing entitlement to any exemption asserted as the basis for withholding records in his possession. *See Barfield v. Sch. Bd. of Manatee Cnty.*, 135 So. 3d 560, 562 (Fla. 2d DCA 2014). As custodian, he has a statutory duty to (1) state in writing and with particularity the reasons for his conclusions that the record is exempt or confidential, § 119.07(1)(f), Fla. Stat. (2022); and (2) produce any non-exempt portion of a record after redacting that portion which he claims is exempt. § 119.07(1)(d), Fla. Stat. (2022).

As detailed below, the exemptions that Sheriff Nocco asserts are not valid. Moreover, CAIR-FL has made multiple requests that Sheriff Nocco produce the requested records in the format in which they are kept, with redactions of information the agency believes to be exempt

under Chapter 119. (See Exs. 5; 6; 10). By failing to produce even redacted records, Sheriff Nocco has not met his obligations as record custodian with regard to Requests #13, #18, #60.

III. RESPONDENT SHERIFF NOCCO'S STATED EXEMPTIONS FOR DISCLOSURE DO NOT APPLY TO PETITIONER CAIR-FL'S REQUESTS.

A. The Criminal Intelligence Information and Criminal Investigative Information Exemptions Apply Only to Active Intelligence and Active Investigation Information.

The Public Records Act defines “Criminal *intelligence* information” as information collected by a criminal justice agency with respect to an individual or group “in an effort to anticipate, prevent, or monitor possible criminal activity.” § 119.011(3)(a), Fla. Stat. (2022) (emphasis added). “Criminal *investigative* information” is defined as that information compiled in the course of a criminal investigation of a “*specific* act or omission,” and includes “information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.” § 119.011(3)(b), Fla. Stat. (2022) (emphasis added). These exemptions only apply where criminal intelligence or criminal investigation information is “active.” § 119.07(2)(c)(1), Fla. Stat. (2022). Criminal intelligence information is “active” if it is related to intelligence gathering with a “reasonable, good faith belief that it will lead to detection of *ongoing* or *reasonably anticipated* criminal activities.” § 119.011(3)(d)(1), Fla. Stat. (2022) (emphasis added). Criminal investigative information is active “as long as it is related to an *ongoing investigation*, which is continuing with a reasonable, *good faith anticipation of securing an arrest or prosecution* in the foreseeable future.” § 119.011(3)(d)(2), Fla. Stat. (2022).

i. Petitioner CAIR-FL's Request #13 for the Prolific Offender Data List Does Not Qualify as Active Criminal Intelligence or Active Criminal Investigative Information.

As an initial matter, CAIR-FL has requested only de-identified demographic information about people on the Prolific Offender List in the format in which it is kept by PSO. Such

information reveals nothing of substance that would interfere with any active investigation or surveillance operation. It cannot, by its very deidentified nature, reveal the identity of anyone on the lists and hence cannot reveal that anyone is at risk of prosecution or arrest or otherwise involved in criminal activities.

Moreover, even had Plaintiffs sought more detailed information about the Prolific Offender List, the exemptions would still not apply. The Predictive Policing Program scores individuals based on data over a three-year time span and then selects those deemed likely to commit future crimes for increased monitoring by the PSO. This list therefore includes individuals based on *past* history of arrests and other criteria. *See supra* ¶14. Sheriff Nocco bears the burden of presenting specific evidence that shows the Prolific Offender List itself meets the statutory definition of criminal intelligence or criminal investigative information, *and* that such information is active. The exemption for active criminal intelligence information must be construed narrowly and is “not intended to prevent disclosure of criminal files forever on the mere possibility that other potential criminal defendants may learn something from the files.” *Christy v. Palm Bch. Cnty. Sherriff’s Office*, 698 So. 2d 1365, 1367 (Fla. 4th DCA 1997). The same logic applies to the active criminal investigative exemption.

The Prolific Offender List is not the type of “active” criminal intelligence gathering the exemption was drafted to protect. The list contains information about 100 people and has been maintained since 2011. (Ex. 1, at 17, 19). Sheriff Nocco has provided no evidence that he is conducting active investigation into any specific “ongoing” or “reasonably anticipated” criminal activity by any of the individuals on the list. Even if he did have such evidence, the simple fact that they are on the Prolific Offender List would not reveal the existence of such an investigation or its contents or subject. Hence, revealing a person’s presence on the Prolific Offender List would not cause the “premature public disclosure of information which could impede *ongoing*

investigations or allow a suspect to avoid apprehension or escape detection.” *Christy*, 698 So. 2d at 1367. Therefore, the exemption does not apply.

Similarly, the active criminal investigative information exemption does not bar disclosure of information about a person absent evidence that there is a “good faith anticipation of securing an arrest or prosecution” of that person. § 119.011(3)(d)(2), Fla. Stat (2022). For example, the Third DCA held that where an arrest warrant had been quashed without formal charges being filed, there existed no “reasonable, good faith anticipation of arresting or prosecuting” the arrestee in the future; thus, the arrest warrant did not constitute active criminal investigative information and should be unsealed. *Metro. Dade Cnty. v. San Pedro*, 632 So. 2d 196, 197 (Fla. 3d DCA 1994). Sheriff Nocco has not demonstrated that any portion of the requested records relate to an investigation wherein the arrest, or formal charge, of suspected individuals is foreseeable or imminent such that the exemption should apply. And even if the list contained such information, Sheriff Nocco could redact that portion of the record, and produce the remainder, as he is obligated to do under the law. § 119.07(1)(d), Fla. Stat. (2022). Sheriff Nocco has not demonstrated, or suggested, that he has a “good faith anticipation” of arresting or prosecuting everyone on the list.

ii. Petitioner CAIR-FL’s Request #18 for Prolific Offender Pool Data is Not Exempt from Disclosure as Active Criminal Intelligence or Active Criminal Investigative Information.

The Prolific Offender Data List that CAIR-FL requested in Request #13 is a subset of 100 people identified from the Prolific Offender Pool requested in Request #18. Using an “algorithmic risk assessment” tool, approximately 1,800 individuals are placed in a Prolific Offender Pool. *See supra* ¶12. As such, the foregoing arguments regarding how the Prolific Offender Data List does not constitute “active” criminal intelligence or criminal investigative information apply with more force to the Prolific Offender Pool given its larger size and attenuated connection to purported law enforcement investigation or intelligence goals. It is simply not possible for Sheriff Nocco to assert

in good faith that he is conducting an “active” investigation into “reasonably anticipated” criminal activity by each of these 1800 people, particularly when some of them may have committed no crimes at all. And, as with the Prolific Offender List, CAIR-FL has requested only deidentified information, which further renders the exemptions inapplicable.

B. Petitioner CAIR-FL’s Request #60 for At-Risk Youth List Data is Not Exempt from Disclosure Under the Exemptions Asserted by Sheriff Nocco.

On September 24, 2021, Sheriff Nocco, through the PSO, claimed exemptions precluded disclosure of data related to the At-Risk Youth List. As discussed above, Sheriff Nocco failed to state in writing and with particularity the reasons supporting his assertion of these exemptions; therefore, he has not met his statutory obligations. Even if he had, none of the asserted of exemptions would bar disclosure here.

Many of these claimed exemptions share a common pattern: The At-Risk Youth List compiles information from a wide variety of sources which it then processes through an algorithmic scoring system. Some of these sources may contain information exempted from disclosure under state or federal law. Sheriff Nocco cites these exemptions in an attempt to shield the *entire list* from disclosure on that basis. This approach violates the Public Records Act for two basic reasons. First, to the extent that Sheriff Nocco can meet his burden of proving that any of the public records that CAIR-FL requests is exempt, he is obligated to identify and redact only that portion and provide the rest of the records. § 119.07(1)(d), Fla. Stat. (2022). Second, CAIR-FL seeks only deidentified, disaggregated demographic information about the At-Risk Youth List—and none of the exemptions he cites reach such non-personally-identifiable information.

i. Family Educational Rights and Privacy Act (FERPA)

Sheriff Nocco contends that records responsive to Request #60 are exempt from disclosure under FERPA, its implementing regulations, and its Florida state equivalent. *See* 20 U.S.C. 1232g; 34 C.F.R. Part 99; § 1002.221(1), Fla. Stat. (2022). None of these are applicable to the At-Risk Youth List. Federal and state law prohibit covered entities from disclosing “education records” without prior parental consent, or unless a statutory exemption applies. Law enforcement records are exempt from FERPA’s prohibition on disclosure. 20 U.S.C. § 1232g(a)(4)(B)(ii). Law enforcement records are defined as records that are “(i) [c]reated by a law enforcement unit; (ii) [c]reated for a law enforcement purpose; and (iii) [m]aintained by the law enforcement unit.” 34 C.F.R. § 99.8(b)(1). In contrast, education records are defined as “records, files, documents and other materials which – (i) contain information directly related to a student, and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.” 20 U.S.C. § 1232g(a)(4)(A); *see* 34 C.F.R. § 99.3. The statute and subsequent regulation clarify that “[t]he term ‘education records’ does not include-- . . . [] records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purposes of law enforcement.” 20 U.S.C. § 1232g(a)(4)(B)(ii); *see also* 34 C.F.R. § 99.3.

The Sheriff’s At-Risk Youth List is, for the purposes of FERPA, a law enforcement record. The List is not an exempt educational record under FERPA or Section 1022.221. The At-Risk Youth list was created by the PSO for a law enforcement purpose and is maintained by the PSO. While some information used to create the list may have originated in education records, the list itself is “created by law enforcement,” even if it was created in part with the cooperation of an education institution. To the extent disclosure of the At-Risk Youth List would reveal any FERPA-protected information, it would be Sheriff Nocco’s obligation to identify and redact that information rather than withhold the entirety of the record.

Moreover, the specific information CAIR-FL seeks – the de-identified, disaggregated data of the individuals that the PSO has placed on the List – constitutes a record created entirely by the PSO. Even if it obtains the demographic information on each child from the Pasco schools (something it has not demonstrated or even claimed), the overall demographics of the list are a product of the choices PSO made in creating it using data from a variety of sources.

Finally, FERPA simply does not prohibit the disclosure of demographic data by educational institutions. Indeed, the Department of Education itself publishes extensive data of that kind as a part of its Civil Rights Data Collection program, Civil Rights Data Collection, <https://surveys.nces.ed.gov/CRDC/UserAccount/Login?ReturnUrl=%2FCRDC%2F> (last visited Sept. 8, 2022), and “the release of education records that have been de-identified is not considered a ‘disclosure’ under FERPA, since by definition de-identified data do not contain [personally-identifiable information] that can lead to identification of individual students.” Privacy Assistance Technical Center, *Data De-Identification: An Overview of Basic Terms*, U.S. Dep’t of Educ., 4 (2013), https://studentprivacy.ed.gov/sites/default/files/resource_document/file/data_deidentification_terms_0.pdf.

ii. Dropout Prevention and Academic Intervention Programs

The Sheriff’s Office also claims that the public records CAIR-FL seeks are exempt from disclosure under Section 1003.53, Fla. Stat., which concerns dropout prevention and academic intervention programs. That law provides that “[d]istrict school board dropout prevention and academic intervention programs shall be coordinated with . . . law enforcement,” that “these agencies are authorized to exchange information contained in student records and juvenile justice records,” and that “[s]uch information is confidential and exempt from the provisions of s. 119.07(1).” § 1003.53(6), Fla. Stat. (2022). However, the Pasco Sheriff’s At-Risk Youth Program and its other intelligence-led policing programs are not dropout prevention programs. Dropout

prevention programs are administered by a school district, not law enforcement. The section on dropout prevention is part of the education code, contains 18 separate times to various aspects of the program being directed by district school boards, and states that the program is funded through the Florida Education Finance System. § 1003.53, Fla. Stat. (2022). In contrast, the PSO, not the schools, operates the At-Risk Youth program, and its manual describing the operation of the program says nothing about education finance or academic intervention plans. (Ex. 1, at 71-75). This asserted exemption simply does not apply to PSO public records.

iii. Security and Fire Safety

The Security and Fire Safety exemption in § 119.071(3)(a), Fla. Stat. (2022), is also inapplicable to Request #60. This exemption only bars disclosure of information that, if disclosed, would reveal the security capabilities and vulnerabilities of a physical location. *See, e.g., State Attorney's Off. of 17th Jud. Cir. v. Cable News Network, Inc.*, 251 So. 3d 205, 213 (Fla. 4th DCA 2018); *Marino v. Univ. of Fla.*, 107 So. 3d 1231, 1233 (Fla. 1st DCA 2013); *Critical Intervention Servs., Inc. v. City of Clearwater*, 908 So. 2d 1195, 1197 (Fla. 2d DCA 2005). CAIR-FL's requests for de-identified demographic data of the At-Risk Youth List, on the other hand, have no relationship to security schematics or capabilities, nor would the PSO's disclosure endanger the security of any physical property.

iv. Juvenile Justice Records

The Sheriff also erroneously relies on two Florida statutes under Chapter 985, which governs the juvenile justice system, as a basis for nondisclosure of information related to the At-Risk Youth list. However, the At-Risk Youth list is not related to the juvenile justice system. Section 985.04(1) exempts from disclosure information obtained in the context of the juvenile justice system, such as records of a child being placed on probation or being arrested for a law violation. § 985.04(1), Fla. Stat. But the At-Risk Youth list is not juvenile justice or juvenile

delinquent information: the list is not created in relation to a child's involvement with the juvenile justice system (unlike arrest records or records related to a child being adjudicated delinquent). Rather, publicly available information about the At-Risk Youth list shows that no prior criminal history or even arrest history is required for an individual to be placed on the At-Risk Youth List. (Ex. 1, at 70-71) (enumerating numerous weighted factors for placement on At-Risk Youth List not related to criminal history).

Section 985.047(1)(a) is also inapplicable. This statute, which relates to information systems, encourages the Sheriff to maintain a "central identification file on serious habitual juvenile offenders and on juveniles who are at risk of becoming serious habitual juvenile offenders by virtue of having an arrest record[.]" including information gathered from the juveniles' school, child welfare system, and delinquency records to develop a "multiagency information sheet[.]" §985.047(1)(a), Fla. Stat. (2022). These records, created for monitoring of youth who satisfy the criteria of "serious habitual juvenile offenders" or "juveniles who are at risk of becoming serious habitual offenders[.]" are not to be made available for public disclosure under § 119.07. The statute limits the definition of those "at risk of becoming [] serious habitual juvenile offender[s]" to those who have previously been adjudicated as "delinquent" and meet other criteria regarding certain types of arrests. §985.047(1)(c), Fla. Stat. (2022). Sheriff Nocco has not met his burden of showing that the At-Risk Youth list constitutes exempt information regarding "serious habitual juvenile offender[s]." § 985.047(1)(c), Fla. Stat. (2022). To the contrary, the At-Risk Youth list's focus is far broader, including children who have never been adjudicated as "delinquent" and who may never have been arrested. (Ex. 1, at 71-73). To the extent that it contains any information that should be exempt from disclosure, it again is Sheriff Nocco's obligation to identify and redact that information, not withhold the entire list. § 119.07(1)(d), Fla. Stat. (2022).

Finally, in any case, CAIR-FL's request for de-identified information from the At-Risk Youth list would not reveal the identities of juveniles.

v. Department of Law Enforcement

Florida Statute 943.053(3)(b) does not bar disclosure of the At-Risk Youth List. The statute governs the dissemination of criminal justice information and related fees, including with respect to underage youth. It states that criminal history information relating to underage youth compiled by the Criminal Justice Information Program from intrastate sources is confidential and exempt from Section 119.071, Fla. Stat., in all but specified circumstances (related to youth charged as adults or charged with offenses which would constitute adult felonies). This statute is inapplicable to the At-Risk Youth List, which is not compiled exclusively based on criminal history such as arrest or court-adjudication, but rather on a number of non-criminal factors. In fact, underage youth on the At-Risk Youth List may have no delinquency involvement at all. *See* § 943.045(5), Fla. Stat. (2022) (defining criminal history information as information consisting of descriptions of interactions related to formal criminal charges, including arrests, detention, formal criminal charges and the disposition thereof).

Again, even if some portion of information responsive to Request #60 were exempt from disclosure, Sheriff Nocco has the obligation to redact that exempt data and produce the remainder. § 119.07(1)(d), Fla. Stat. (2022). Moreover, CAIR-FL has asked for de-identified records and that demographic information is outside the scope of the exemption.

vi. Protection of Crime Victim's Rights

Finally, the Sheriff's Office suggests that the records are also exempt from disclosure under Marsy's Law, which gives victims "[t]he right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim." Art. I, § 16(b)(5), Fla. Const. However,

though some children are on the At-Risk Youth list because they committed a crime, many are on the list for reasons having nothing to do with criminal activity, such as their grades. Hence, Sheriff Nocco has again attempted to shield the entire list from disclosure on the basis of an exemption that covers, at most, a small part of the information used to create it, rather than redact only that exempt portion, if any. And CAIR-FL's request for de-identified demographic information for those on the At-Risk Youth list does not require disclosure of confidential or privileged victim information. The Sheriff has not met its burden of showing otherwise.

IV. CONCLUSION

Petitioner CAIR-FL's requested records should be produced under the Public Records Act. Respondent Sheriff Nocco has not met his burden to show that the public records are exempt from disclosure. Nor has Sheriff Nocco redacted any portion that would be exempt and produced the remaining public records. CAIR-FL has met the requirements for a writ of mandamus to issue against Sheriff Nocco.

RELIEF REQUESTED

WHEREFORE, Petitioner CAIR-FL respectfully requests that this Court:

- A. Issue a Writ of Mandamus commanding that Respondent Sheriff Nocco perform his mandatory duties by producing the public records requested in Request #13, #18, and #60 as detailed herein, which Respondent Sheriff Nocco has failed to produce, and to which no exemption applies;
- B. Issue an Alternative Writ of Mandamus ordering Respondent Sheriff Nocco to show cause as to why Petitioner CAIR-FL should not be granted the relief sought herein;
- C. Schedule an immediate hearing pursuant to Section 119.11, Florida Statutes, on this matter as soon as practical after Petitioner's Reply is due;

D. Award Petitioner CAIR-FL's counsel its reasonable costs and reasonable attorneys' fees pursuant to § 119.12, Fla. Stat. (2022) and § 86.081, Fla. Stat. (2022); and

E. Grant all other relief as this Court deems just and proper.

Dated this 13th day of September, 2022.

Respectfully submitted,

**SOUTHERN POVERTY LAW CENTER,
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