

**COMMUNITY PRESS, LLC****SUIT NO. 589,971; DIV. M****VERSUS****19<sup>TH</sup> JUDICIAL DISTRICT COURT****CH2M HILL, INC****EAST BATON ROUGE PARISH****STATE OF LOUISIANA****WRITTEN REASONS FOR JUDGMENT**

This matter came before the Court on July 12, 2010, on Exceptions of Unauthorized Use of Summary Proceeding, No Right of Action, Lack of Standing and Failure to State a Justiciable Controversy filed by the defendant, CH2M Hill. Both the plaintiff and defendant also filed motions for summary judgment which were heard as well. The Court then took the matter under advisement for further consideration.

This suit was filed by Community Press, LLC d/b/a Central City News seeking a writ of mandamus and declaratory judgment against defendant, CH2M Hill, Inc., with whom they had previously contracted to print advertisements as part of a marketing effort entitled "We are Central". Central City News is seeking certain pieces of information that are in the possession of CH2M Hill which they contend fall under the public records doctrine as they allege they were prepared on behalf of the City of Central and maintained by CH2M Hill pursuant to a contract with the City of Central. CH2M Hill does not dispute that they prepared and maintained the documents in connection with the March 26, 2010, advertisement which was run in the The Advocate to promote CH2M Hill, but asserts that they are not a public entity and that the documents sought are not public records within the meaning of the Louisiana Public Records Law, found in Louisiana Revised Statute 44:1, et seq. as they were not prepared at the direction of the City of Central.

Prior to filing this suit, Central City News sought to obtain the documents at issue by hand-delivering public records requests to CH2M Hill on three different occasions which are at issue in the upcoming mandamus hearing set for Friday, July 23, 2010. The motions for summary judgment were filed with respect to the issues raised in the writ of mandamus and it is on these motions that the Court is now ready to rule.

The first public records request at issue was delivered on March 31, 2010, requesting that Central City News be permitted to examine all records in the possession of CH2M Hill relevant to the advertisement entitled "We are Central" which ran on March 26, 2010. The request included any and all material in possession of CH2M Hill that related to the publication in question. Central City News has previously issued a public records request regarding information surrounding the "We are Central" publication to the City of Central who, through counsel, denied possessing any of the sought after records and/or information and directed Central City News to CH2M Hill.

The second request at issue was hand-delivered by Central City News to CH2M Hill and additionally sought the names of specific individuals, including public officials of the City of Central, to assist CH2M Hill in identifying the communications, if in existence, that should be available for review relating to the March 26, 2010, advertisement at issue.

The third and final request at issue, is that made on April 13, 2010 by hand-delivery from Central City News to CH2M Hill through CH2M Hill Project Manager Tommy Higgs, which sought additional information related to the publication "We are Central". In this request, Central City News requested to examine communications between the Mayor of Central and CH2M Hill regarding the ad published March 26, 2010, in the Advocate entitled "We are Central".

Louisiana Code of Civil Procedure Article 966 B states, "Summary judgment is proper when the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law." The threshold question is whether a genuine issue of material fact remains. However, the Court is not permitted to make credibility determinations or weigh the evidence in the matter. The plaintiff or defendant in the principal or any incidental action, with or without supporting affidavits, may move for a summary judgment in his favor for all or part of the relief for which he has prayed. The plaintiff's motion may be made at any time after the answer has been filed. The defendant's motion may be made at any time.

Louisiana Revised Statute 44:1 provides in pertinent part:

A.(1) The phrase "public body" means any branch, department, office, agency, board, commission, district, governing authority, political subdivision, or any committee, subcommittee, advisory board, or task force thereof, or any other instrumentality of state, parish, or municipal government, including a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function.

(2)(a) All books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of this state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state, are "public records", except as otherwise provided in this Chapter or the Constitution of Louisiana.

(b) Notwithstanding Subparagraph (a), any documentary material of a security feature of a public body's electronic data

processing system, information technology system, telecommunications network, or electronic security system, including hardware or software security, password, or security procedure, process, configuration, software, and code is not a "public record".

The Court has carefully examined the pleadings, memoranda and law as it pertains to the issues at hand, admitted relevant evidence for careful consideration and listened to the argument of counsel and is now ready to rule in this matter. The Court hereby finds that CH2M Hill is not a "public body" within the meaning of Louisiana Public Records Law, La. Revised Statute 44:1, et seq. CH2M Hill is a private, for-profit corporation who independently contracted with the City of Central for three of the four advertisements that were placed in local newspapers. The fourth was placed by CH2M Hill to promote their company and the services that it provides. CH2M Hill paid for the March 26, 2010, advertisement in The Advocate, developed the concept and took steps to place the add entirely on their own and not in connection with any contract that they had with the City of Central. Therefore these records are not subject to open inspection as purported by Central City News. This is **not** a situation where a public entity has placed public records into the hands of a third party to prevent their disclosure as the City of Central did not have participate in the development or placement of the advertisement in question.

The Court finds that the entirety of the internal records and documents created by CH2M Hill, a private, for-profit corporation, are not public records within the meaning of the Louisiana Public Records Law, Louisiana Revised Statute 44:1 et. Seq. as the March 26, 2010, advertisement was not placed in connection with their contract with the City of Central but rather in their private capacity for their own benefit; therefore, they will not be subject to examination by the Plaintiff, Central City News.

The Court further finds that the information sought in the March 31, 2010, April 12, 2010 and April 13, 2010, public records requests shall not be disclosed as it is clear to this Court that the information was created, generated or prepared by CH2M Hill on their own behalf, for their own benefit and of their own volition. The Court has examined the affidavit of Grega St. John, Regional Director of Operations for CH2M Hill, which supports the assertions by CH2M Hill and the findings of this Court. Central City News has submitted the affidavit of Louis E. Jenkins, Jr., a member of Community Press, LLC d/b/a Central City News in support of their contentions and allegations which the Court has examined and contemplated during the course of rendering this decision.

Accordingly, the Motion for Summary Judgment filed by CH2M Hill dismissing Central City News' petition for mandamus and declaratory judgment is hereby granted. There are no genuine issues of material fact remaining as to the status of CH2M Hill which is not a public entity and is not subject to the Louisiana Public Records Law as to the information sought in this instant writ of mandamus. Accordingly, CH2M Hill, Inc. is hereby entitled to judgment as a matter of law.

Furthermore, the motion for summary judgment filed by Central City News is hereby denied. All other exceptions are now moot. All costs of these motions shall be paid by Central City News and the Court will reserve ruling on the issue of attorney's fees until a later date after a hearing is held specifically on that issue.

Counsel for CH2M Hill is to prepare a judgment in accordance with these oral reasons and submit it for my signature in accordance with District Court Rule 9.5.

A judgment will be signed accordingly.

Baton Rouge, Louisiana, this July 22 day of July, 2010.

*Kay Bates*  
KAY BATES, JUDGE  
NINETEENTH JUDICIAL DISTRICT COURT

I hereby certify that on this day a copy of the written reasons for Judgment was mailed by me, with sufficient postage affixed to:

*Alex St. Amant, II; Steven Stockstill;*

Done and signed on July 22, 2010

*Kent Lambert;*

*Elaine Veillon*  
Deputy Clerk of Court

*Margaret J. Saroye  
Brandy Shreeley  
Benjamin Janke*

**FILED**

JUL 22 2010

*Elaine Veillon*  
DY. CLERK OF COURT