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25 March 2014

The Honorable John Allen, Chairman
Naples Airport Authority
160 Aviation Drive North
Naples, FL 34104-3568

Dear Chairman Allen:

We are writing to express our concerns regarding actions taken by the Naples Airport Authority (NAA) against Naples Airport Watch (NAW)—specifically, the criminal complaint filed by NAA's executive director, Mr. Theodore Soliday, against NAW alleging forgery and falsification of a public record. Mr. Laurence Schultz and Mr. Allen Parker are managers of NAW. These are very serious allegations. Chairman Allen — forgery of a public record is a third degree felony under s. 831.01, F.S., and falsification of a public document is a first degree misdemeanor under s. 839.12, F.S. Punishment for both offenses includes hefty fines and jail terms, and such allegations should not be lightly made, particularly by a government agency against a citizen exercising his or her first amendment rights.

FACTS

After an investigation into the criminal complaint filed by Soliday, seemingly on behalf of the NAA, the Collier County Sheriff's Office dismissed the complaint after finding the allegations were unfounded. In fact, a spokesperson for the Sheriff's Office "said investigators 'could not find intent or proof that a crime had occurred,' and called the allegations unfounded." Naplesnews.com, Feb. 13, 2014

According to a memo sent by Mr. Soliday to Collier County Sheriff Kevin Rambosk on June 7, 2013, the NAW converted a public record document on the NAA website from one electronic file format to another; in the conversion some words in the document were scrambled, including the airport's motto, "The Best little Airport in the Country." The NAW then provided a link in its newsletter to the converted document.

In the June 7 memo to Sheriff Rambosk laying out the facts of the complaint, Mr. Soliday asserts that the NAW could have simply provided a link to the document on the NAA website. That's true, certainly, but NAW lawfully converted the public record document to a different file format. According to Mr. Schultz, NAW converted the .PDF files to Word to make it easier for those who receive the organization's newsletter to open the attachments. *Id.*

In the same vein, once Mr. Soliday was aware of the typos caused by the conversion of the public record document from one file format to another, he could have simply called Mr. Schultz or Mr. Parker and asked them to rectify the error. Instead, Mr. Soliday, on behalf of the NAA, asserted serious and unwarranted criminal charges against NAW – charges that were dropped after a criminal investigation determined the charges were unfounded.

In reading news reports of the incident, one can only conclude that the criminal complaint was filed in retaliation for NAW's continuing criticism of the airport authority, and was a clear attempt to intimidate and stifle the watch dog group. In an email to Sheriff Rambosk dated June 12, 2013, just a few days before the complaint was filed with the Sheriff, Executive Director Soliday wrote, "We . . . have a number of folks who do not, really like the Airport! . . . [I]t is time in our opinion that they be at least reigned [sic] in a tad or maybe just scarred [sic]." And in learning that the criminal complaint against NAW had been dismissed, Mr. Soliday expressed his disappointment to a reporter for the *Naples Daily News*, saying he'd "like to see their hand slapped." *Id.*

FLORIDA'S PUBLIC RECORDS LAW

Florida has a long and rich tradition of providing access to public records, Chairman Allen. Our public records law was first codified in 1909, and in 1992, Florida voters overwhelmingly approved a constitutional right of access to the records of all three branches of state government. Article I, s. 24(a), Fla. Con.

Section 119.07(1), F.S., affords every person a right to inspect and copy all non-exempt public records, and "[e]ven though a public agency may believe that a person or group are fanatics, harassers or are extremely annoying, the public records are available to all . . ." *Salvadore v. City of Stuart*, No. 91-812 CA (Fla. 19th Cir. Ct. December 17, 1991). Furthermore, our courts have historically and regularly held that the motivation of a person seeking access to public records is immaterial. *See, e.g., State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905) and *Curry v. State*, 811 So.2d 736 (Fla. 4th DCA 2002).

Of particular interest to the case at issue here, the Second District Court of Appeal held that a requestor's motives for seeking public record documents as well as the custodial agency's claim of financial and public harm "are irrelevant in an action to compel compliance with the Public Records Act." *News-Press Publishing Company, Inc., v. Gadd*, 388 So.2d 276, 278 (Fla. 2d DCA 1980). In other words, had NAW or its managers intentionally – rather than inadvertently – changed or modified the public record document downloaded from the NAA website, it is of no concern of Mr. Soliday and the NAA.

CONCLUSION

The NAW did not alter a public record document, NAW altered a *copy* of the document, a fact that seems to be lost on Mr. Soliday and the NAA. The original public record document presumably is still on the NAA website, and anyone wishing to inspect or copy the original document can make a public record request to the NAA. NAW simply provided its email list with a copy of the original public record document which was unintentionally altered when it was converted from one file format to another. The alterations were minor and did not significantly change the public record document's content.

Frankly, Chairman Allen, we find Mr. Soliday's actions egregious. Yes, after a criminal investigation, the criminal charges against NAW were dropped. But the chilling effect of such grievous action on those who may criticize their government is not diminished by the fact that the investigation determined that the charges were unfounded.

We understand from recent news reports that Soliday will be receiving a letter of reprimand for his email to Sheriff Rambosk, and has offered to take a two-week suspension without pay. naplesnews.com March 20, 2014. We believe this action by the NAA to be woefully insufficient, as it focuses only on an "unprofessional and inappropriate" email sent by Soliday to the Sheriff, rather than on the filing of retaliatory criminal charges against Mr. Schultz and NAW, charges that Soliday himself admits were an attempt to intimidate and muzzle the NAA critics. And one critical question remains unanswered: Did Mr. Soliday file the criminal charges on his own volition, or was he acting on behalf of the NAA?

In light of the ensuing and ongoing public controversy surrounding Mr. Soliday and his actions on or at the behest of the NAA, we strongly urge you to provide the public with full disclosure of the acts and discussions that led to the filing of the charges against the NAW, including the role of the NAA board members and its attorney, Joe McMackin.

We appreciate your attention to our concerns, Chairman Allen. If we can answer any questions or provide you with additional information, please don't hesitate to contact us. We look forward to your response.

Sincerely,



Barbara A. Petersen, President

Cc: The Honorable John F. Sorey, III, Mayor, Naples City Council
Joe McMackin, Attorney, Naples Airport Authority
Mr. Laurence Shultz, Naples Airport Watch
Jon Kaney, General Counsel, First Amendment Foundation
Manny Garcia, Editor, *Naples Daily News*