

IN THE CIRCUIT COURT CRITTENDEN COUNTY

PAM HICKS and JOHN MARK  
BYERS

APPELLANTS

v.

CV-2012-290-6

THE WEST MEMPHIS, ARKANSAS,  
POLICE DEPARTMENT; THE CITY  
OF WEST MEMPHIS, ARKANSAS;  
DONALD OAKES, in his Individual  
and Official Capacities as Chief of Police  
of The West Memphis, Arkansas,  
Police Department; and, WILLIAM  
H. JOHNSON, in his Individual and  
Official Capacities as Mayor of  
WEST MEMPHIS, ARKANSAS

APPELLEES

**AMENDED PETITION FOR DECLARATORY JUDGMENT, COMPLAINT  
FOR VIOLATION OF THE ARKANSAS FREEDOM OF INFORMATION ACT OF  
1967, AND APPEAL FROM ADMINISTRATIVE DECISION OF THE APPELLEES**

Come now the Appellants, and for their Amended Petition for Declaratory Judgment,  
Complaint for Violation of the Arkansas Freedom of Information Act of 1967, and Appeal from  
Administrative Decision of the Appellants, state:

1. Pam Hicks and John Mark Byers (hereinafter, "Appellants") hereby incorporate to this Amended Petition, Complaint, and Appeal all statements, allegations, and exhibits of the original Petition and Complaint as if restated herein word-for-word. Ark. R. Civ. P. 10(c).
2. The Appellant, John Mark Byers (hereinafter, "Appellant"), is, and was at all times stated herein, a citizen of the United States and resident of the State of Tennessee.
3. Appellant is the father of Christopher Byers, deceased.
4. On May 5, 1993, Christopher Byers, deceased, was murdered in West Memphis,

Arkansas.

5. Christopher Byers, deceased, was eight years old at the time of his murder.

6. Two other eight-year-old children were also murdered at the same place and time, including Steve E. Branch, the son of Pam Hicks.

7. Appellee, The West Memphis Police Department (hereinafter, "Appellee"), investigated the murder of Steve E. Branch, deceased, as well as Christopher Byers, deceased, as well as the other deceased minor.

8. On, or about, June 27, 2012, the Appellant, through his below-signed attorney, requested the opportunity to view all of the evidence gathered by Appellee. See, Appellant's Exhibit 4, Letter from below-signed attorney to the West Memphis Police Department, attached.

9. Said Letter was received by Appellee on, or about, July 3, 2012. See, Appellant's Exhibit 5, Postal Service Form 3811, 7011 1570 0001 5355 0625, attached.

10. Also on July 6, 2012, the City of West Memphis responded in a letter to the below-signed attorney. See, Appellant's Exhibit 6, Letter from West Memphis Police Department to below-signed attorney, attached.

11. In said response, the City of West Memphis, on behalf of all Defendants, denied the Appellant's request to view the evidence gathered as part of the investigation of the murders of May 5, 1993, in West Memphis, Arkansas.

12. As was shown in the original Complaint and incorporated herein, said denial was in violation of Arkansas Law. Ark. R. Civ. P. 10(c).

13. The Appellant joins Pam Hicks in appealing the denial of their right to access the public

records requested. Ark. Code Ann. §25-19-107(a).

14. Appellants respectfully request a hearing withing seven days of this Petition. Ark. Code Ann. §25-19-107(b).

WHEREFORE, Appellants pray for an order from this Court granting their Petition, Complaint, and Appeal against the Appellants, for an order to the Appellees requiring them to allow Appellants to view and examine all evidence gathered in the investigation of the murders that occurred in West Memphis on May 5, 1993, and for all other proper relief.

Respectfully Submitted,



Ken Swindle  
Ark. Bar #97234  
619 West Walnut Street  
Rogers AR 72756  
Telephone (479) 621-0120  
Fax (479) 621-0838

**CERTIFICATE OF SERVICE**

I, Ken Swindle, hereby state that the above-referenced document was transmitted to David Peebles, via facsimile, (870) 732-7514, this 7th day of July, 2012.



Ken Swindle



## SWINDLE LAW FIRM

KEN SWINDLE, Esq.  
619 W. Persimmon Street  
Rogers AR 72756  
Phone: (479) 621-0120 Fax: (479) 621-0838

June 27, 2012

West Memphis Police Department  
626 East Broadway Street  
West Memphis AR 72301

Via Certified Mail:  
7011 1570 0001 5355 0625

Re: Freedom of Information Act Request

Dear Sir or Madam:

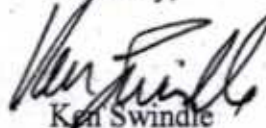
Please be advised that I represent John Mark Byers, the father of Christopher Byers, who was murdered on May 5, 1993, in West Memphis. I am writing to you to formally request Mr. Byers, accompanied by my agent, Danny Owens, to be allowed to view **all property** owned by Mr. Byers, or, alternatively, owned by his minor son Chris Byers, at the time of his death, as well as all other physical evidence relating to the triple homicide investigation of May 5, 1993, that is currently held by the West Memphis Police Department. This evidence includes, but is not limited to, any bicycle and any clothing and personal effects of any of the three victims, including any shoes of any of the victims.

This letter is made pursuant to the Rights of Victims of Crime Act, and the Arkansas Freedom of Information Act. See, Ark. Code Ann. §§16-90-1106, 1114-1115, and 25-19-101, *et seq.* As you know, the Freedom of Information Act provides that any person who negligently violates its provisions shall be guilty of a misdemeanor and punished by a fine or jail time, or both, or a sentence of public service or education, or both. If the evidence requested is in active use or storage and therefore not available at this time for examination, then the custodian of that evidence shall certify this fact in writing to the applicant and set a date and hour within **three working days**, at which time the records will be available. Any citizen denied the rights granted to him by the Arkansas FOIA may appeal immediately from the denial to the Pulaski County Circuit Court or to some other appropriate Circuit Court for relief. The petition shall be heard within 7 days of the application of the petitioner and those who refuse to comply with the orders of the court shall be found guilty of contempt of court.

In any action to enforce the rights granted by the Arkansas FOIA, or in any appeal therefrom, the Court shall assess against the defendant reasonable attorneys fees and other litigation expenses reasonably incurred by a plaintiff who has substantially prevailed, unless the court finds that the position of the defendant was substantially justified, or that other circumstances make an award of those expenses unjust.

Would you kindly let me know what arrangements are necessary for my client, Mr. Byers, accompanied by my agent, Danny Owens, to gain access to the file and review the evidence requested? Thank you, and I look forward to working with you in this matter.

Sincerely,

  
Ken Swindle



7011 1570 0001 5355 0625

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**  
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For delivery information visit our website at www.usps.com.

WEST MEMPHIS AR 72301

Postage	\$ 00.45	0756
Certified Fee	\$2.95	05
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Restricted Delivery Fee (Endorsement Required)	\$0.00	
<b>Total Postage &amp; Fees</b>	<b>\$ 03.40</b>	



Sent to  
**WEST MEMPHIS POLICE DEPARTMENT**  
 Street, Apt. No.,  
 or PO Box No. **626 EAST BROADWAY STREET**  
 City, State, ZIP+4  
**WEST MEMPHIS AR 72301**

PS Form 3800, August 2006 *BYCLS* See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
**WEST MEMPHIS POLICE DEPARTMENT**  
**626 EAST BROADWAY STREET**  
**WEST MEMPHIS AR 72301**

2. Article Number  
 (Transfer from service label)

7011 1570 0001 5355 0625

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee  
*[Signature]*

B. Received by (Printed Name)  Agent  
*[Signature]*

C. Date of Delivery  Agent  
**3 July 12**

D. Is delivery address different from item 1?  Yes  
 No  
 If YES, enter delivery address below:

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

PS Form 3811, February 2004 Domestic Return Receipt *BYCLS* 102595-02-M-1540







# CITY OF WEST MEMPHIS

205 S. Redding • P.O. Box 1728 • West Memphis, AR 72303-1728 • (870) 732-7500

DAVID PEEPLES  
CITY ATTORNEY

## FAX TRANSMISSION

(870) 732-7515  
FAX: (870) 732-7514  
E-mail: dpeeples@citywm.com

TO Mr. Ken Swindle, Attorney at Law

FROM DAVID C. PEEPLES

DATE July 6, 2012

RE Response to Freedom of Information Request

FAX NO 479-621-0838

TOTAL PAGES INCLUDING THIS ONE: 3

ORIGINAL TO FOLLOW BY MAIL. YES (X) NO ( )

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE IMMEDIATELY.

### REMARKS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### NOTE

The papers transmitted herewith are to be delivered immediately to the individual or entity named above. Said papers may contain attorney/client privileged and confidential information intended for the use of the addressee only, and no other person is authorized to read, copy or distribute these papers or to disseminate any information contained therein.





# CITY OF WEST MEMPHIS

205 S. Redding • P.O. Box 1728 • West Memphis, AR 72303-1728 • (870) 732-7500

DAVID C. PEEPLES  
CITY ATTORNEY

(870) 732-7515

FAX: (870) 732-7514

E-mail: [dpeeples@citywm.com](mailto:dpeeples@citywm.com)

July 6, 2012

Mr. Ken Swindle  
Attorney at Law  
619 W. Persimmon Street  
Rogers, AR 72756

By fax to: 479-621-0838

**Re: Freedom of Information Request for John Mark Byers**

Dear Mr. Swindle:

Your Freedom of Information request dated June 27, 2012, directed to the "West Memphis Police Department" and received on July 3, 2012, has been referred to this office for a response. Initially, I note that you have referenced the Rights of Victims of Crime Act, however, that Act is not applicable to the physical evidence retained by a law enforcement agency following a conviction for a violent offense. In accordance with A.C.A. §12-12-104(b), following any conviction for a violent offense, the physical evidence is required to be permanently impounded and securely retained by the law enforcement agency. Any request under the Rights of Victims of Crime Act to review the physical evidence referenced in your letter is denied.

Additionally, the Arkansas Freedom of Information Act is not applicable to the physical evidence referenced in your letter and which is retained by the West Memphis Police Department. A.C.A. §25-19-103(5)(A) defines "public records" as "writings, recorded sounds, films, tapes, electronic or computer-based information, or data compilations in any medium required by law to be kept or otherwise kept and that constitute a record of the performance or lack of performance of official functions that are or should be carried out by a public official or employee, a governmental agency, or any other agency wholly or partially supported by public funds or expending public funds." In *Nolan v. Little*, 359 Ark. 161, 196 S.W. 3d 1 (2004), the Arkansas Supreme Court determined that the Freedom of Information Act does not apply to physical objects that are not "mediums" on which records and information may be stored or represented. For this reason, your Freedom of information request to review the physical evidence in this matter is denied.

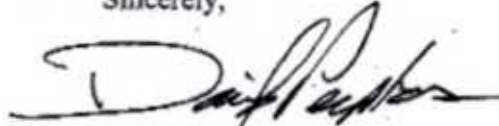
**Mr. Ken Swindle**

**July 6, 2012**

**Page Two**

Arrangements to inspect and/or copy the documents and any other "public records" that are available pursuant to the Arkansas Freedom of Information Act may be made by contacting Capt. Regina Meek of the West Memphis Police Department at 626 East Broadway, West Memphis, AR, 72301, or by phone at 870-732-7684.

Sincerely,

A handwritten signature in black ink, appearing to read "David C. Peoples". The signature is fluid and cursive, with a large initial "D" and "P".

David C. Peoples  
City Attorney

cc: Chief Donald Oakes  
Capt. Regina Meek