

IN THE CIRCUIT COURT OF CRITTENDEN COUNTY, ARKANSAS

PAM HICKS and JOHN MARK BYERS

PLAINTIFFS

v.

2012 SEP 13 AM 9:31

CASE NO. CV-2012-290

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

DEFENDANTS

MOTION TO DISMISS CLAIM OF JOHN MARK BYERS

Comes now Defendant City of West Memphis¹, by and through David C. Peebles, West Memphis City Attorney, and in addition to the previously filed motion to dismiss on behalf of all Defendants, and in support of this Motion to Dismiss Claim of John Mark Byers pursuant to ARCP Rule 12(b)(6), move this Court to dismiss the Plaintiff's Amended Petition for Declaratory Judgment and Complaint for Violation of the Arkansas Freedom of Information Act of 1967 and Appeal From Administrative Decision of Appellees for failure to state a claim upon which relief can be granted as to the Defendants. This Defendant has simultaneously filed a brief in support of this Motion to Dismiss which is incorporated herein by reference.

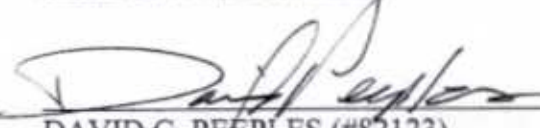
WHEREFORE, PREMISES CONSIDERED, DEFENDANT PRAYS that this Court enter an order dismissing the Plaintiff's Petition for Declaratory Judgment and Complaint for Violation of the Arkansas Freedom of Information Act of 1967 and Appeal From Administrative

¹Plaintiff has stated in the response to the previously filed motions to dismiss plaintiff's intent to seek voluntary dismissal of William H. Johnson and Donald Oakes. Additionally, the West Memphis Police Department is not a separate legal entity and, therefore, not a proper party to be named as a defendant. See *Ketchum v. City of West Memphis*, 974 F.2d 81 (1992).

Decision of Appellees pursuant to ARCP Rule 12(b)(6) and for such other just and proper relief to which the Defendants may be entitled.

Respectfully submitted,

**THE CITY OF WEST MEMPHIS,
ARKANSAS, Defendant**

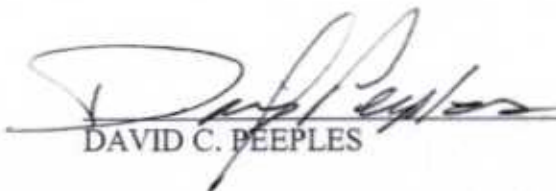
By: 

DAVID C. PEEPLES (#82123)
WEST MEMPHIS CITY ATTORNEY
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Phone: 870-732-7515
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CERTIFICATE OF SERVICE

I, David C. Peeples, West Memphis City Attorney, attorney for Defendant, City of West Memphis, Arkansas, hereby certify that I have served a copy of the above and foregoing pleading upon the attorney of record for the Plaintiff by placing a copy of the same in the U. S. Mail, postage prepaid, and addressed as follows: Ken Swindle, Attorney at Law, 619 West Walnut Street, Rogers, AR 72756.

DATED this 13 day of September, 2012.


DAVID C. PEEPLES

IN THE CIRCUIT COURT OF CRITTENDEN COUNTY, ARKANSAS

PAM HICKS and JOHN MARK BYERS

PLAINTIFFS

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POLICE DEPARTMENT; THE CITY
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of the West Memphis, Arkansas, Police
Department; and WILLIAM H.
JOHNSON, in his Individual and
Official Capacities as Mayor of West
Memphis, Arkansas

DEFENDANTS

**BRIEF IN SUPPORT OF MOTION TO DISMISS
CLAIM OF JOHN MARK BYERS**

Comes now Defendant City of West Memphis¹, by and through David C. Peebles, West Memphis City Attorney, and in addition to the previously filed motions to dismiss on behalf of the Defendants, and in support of this Motion to Dismiss state as follows:

Defendant City of West Memphis, Arkansas, restates and realleges the grounds set forth in the previously filed motions to dismiss on behalf of the Defendants.

Additionally, any claim asserted by or on behalf of John Mark Byers should be dismissed for lack of standing of John Mark Byers to bring any claim under the Arkansas Freedom of Information Act. A.C.A. §25-19-101, *et. seq.*

A.C.A. §25-19-105(a)(1)(A) states "Except as otherwise specifically provided by this section or by laws specifically enacted to provide otherwise, all public records shall be open to

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inspection and copying by any citizen of the State of Arkansas during the regular business hours of the custodian of the records." [Emphasis added.]

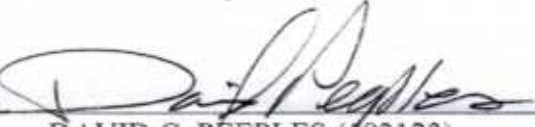
In paragraph 2 of the Amended Petition it is stated that "The Appellant, John Mark Byers, (hereinafter, "Appellant"), is, and was at all times stated herein, a citizen of the United States and resident of the State of Tennessee." [Emphasis added.]

Inasmuch as John Mark Byers is a resident of the State of Tennessee he lacks the necessary standing pursuant to A.C.A. §25-19-105(a)(1)(A) to assert any claim under the Arkansas Freedom of Information Act.

WHEREFORE, PREMISES CONSIDERED, DEFENDANT PRAYS that this Court enter an order dismissing the Amended Petition for Declaratory Judgment and Complaint for Violation of the Arkansas Freedom of Information Act of 1967 pursuant to ARCP Rule 12(b)(6) for lack of standing on the part of John Mark Byers and for such other just and proper relief to which the Defendant may be entitled.

Respectfully submitted,

**THE CITY OF WEST MEMPHIS,
ARKANSAS, Defendant**

By: 

DAVID C. PEEPLES (#82123)
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P. O. Box 1728
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I, David C. Peebles, West Memphis City Attorney, attorney for Defendant, City of West Memphis, Arkansas, hereby certify that I have served a copy of the above and foregoing pleading upon the attorney of record for the Plaintiff by placing a copy of the same in the U. S. Mail, postage prepaid, and addressed as follows: Ken Swindle, Attorney at Law, 619 West Walnut Street, Rogers, AR 72756.

DATED this 13 day of September, 2012.



DAVID C. PEEPLES