

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR OSCEOLA COUNTY, FLORIDA

CASE NO.: 2020-CA-001169-O

JOSHUA MEYERS,

Plaintiff,

v.

OSCEOLA COUNTY, and
BOARD OF OSCEOLA COUNTY
COMMISSIONERS,

Defendants.

**ORDER GRANTING FINAL SUMMARY JUDGMENT AS TO COUNTS I AND IV IN
FAVOR OF PLAINTIFF JOSHUA MEYERS**

and

**ORDER GRANTING FINAL SUMMARY JUDGMENT AS TO COUNT II AND III IN
FAVOR OF DEFENDANT OSCEOLA COUNTY**

THIS MATTER came before the Court on the “Plaintiff’s Motion for Final Summary Judgment,” filed on June 8, 2021, and the “Defendants’ Motion for Final Summary Judgment,” filed on September 24, 2021, both heard on November 5, 2021. The Court, having reviewed the instant Motions, along with both parties’ responses and memoranda, relevant pleadings, filings, and record evidence, having heard arguments from both counsel at the hearing, and being otherwise duly advised in the premises, finds as follows:

RELEVANT FACTS AND PROCEDURAL HISTORY

The basic facts of this case are not in dispute. Defendant Osceola County created the Executive Policy Group (“EPG”) and the Emergency Management Working Group (“EMWG”) on July 11, 2011, in accordance with Osceola County Ordinance No. 11-16. Defendant created these entities to “promote the County’s emergency preparedness, response, recovery, and

mitigation through enhanced coordination and long-term planning.” The EPG is the “group of officials in the emergency operations center designated in the Comprehensive Emergency Management Plan with specific roles and responsibilities related to policy direction during emergencies and programmatic guidance in non-emergency setting.” *See* Osceola Cty. Ord. No. 11-16. It was also tasked with providing executive-level policy decisions in emergencies and executive-level direction in non-emergencies. *See* Osceola Cty. Ord. No. 11-16. The EMWG was the “working group of representatives selected from government and non-government organizations and support functions, as designated in the Comprehensive Emergency Management Plan.” *See* Osceola Cty. Ord. No. 11-16. Together, Defendant used the EPG and the EMWG to control its response to an emergency and coordinate its response among various local entities.

In response to the ongoing COVID-19 pandemic, Defendant (Osceola County) declared a state of emergency. The EPG held meetings during this time, where the EPG adopted emergency orders requiring the use of masks. These orders had the force of law. None of these meetings were announced to the public, and the public was not allowed to attend these meetings. No minutes were created and no records were generated or kept for these meetings.

On April 20, 2020, as a resident of Osceola County, Plaintiff filed his Complaint against Osceola County and the Board of Osceola County Commissioners¹ based on violations of Florida’s Sunshine Law, section 286.011, Florida Statutes, and Public Records Act, section 119.07, Florida Statutes.² Therein, he alleges claims for the following: declaratory judgment

¹ The Board of County Commissioners filed a motion to dismiss the claims against it on the basis that the Board may only be sued in the name of Osceola County. The Court has granted that motion in a separate Order. This Order, therefore, only pertains to Defendant Osceola County.

² Plaintiff initially lodged all causes of action in the Complaint against the EMWG, but Plaintiff has since conceded that the EMWG did not meet during the relevant timeframe. The causes of action levied against the EMWG are accordingly moot.

pursuant to Chapter 86, construing the rights and obligations of the parties outlined in the Sunshine Law (Count I); declaratory judgment pursuant to Chapter 86, construing the rights and obligations of the parties set forth in the Public Records Act (Count II); mandamus relief under the Sunshine Law and the Public Records Act (Count III); and temporary and permanent injunctive relief due to Sunshine Law violations (Count IV).

Plaintiff moved for a temporary injunction on May 13, 2020, where he requested an Order requiring the EPG to hold meetings open to the public during the pendency of this litigation. The Court held hearings on the matter on May 26, 2020, and June 4, 2020, denied the motion on June 5, 2020, and likewise denied Plaintiff's motion for rehearing on July 29, 2020.

Defendant filed its amended answer and affirmative defenses on August 20, 2021, arguing the following concerning the purported Sunshine Law violations: (1) the procedures and formalities for public access to EPG meetings were waived pursuant to section 252.38(3)(a)5, Florida Statutes, as to Counts I, III, and IV; (2) the request for injunctive relief in Count IV was overbroad; and (3) the claims for relief based on the EPG's meetings held during the relevant timeframes are now moot because the state of emergency for Osceola County terminated on June 21, 2021, and Defendant is unlikely to declare a state of emergency again or impose local restrictions for the COVID-19 pandemic or any future pandemic due to the Governor's issuance of Executive Order 21-102, preempting local government's powers to adopt any emergency orders imposing restrictions or mandates upon business or individuals due to COVID-19.

On June 8, 2021, Plaintiff filed the instant "Plaintiff's Motion for Final Summary Judgment," arguing that he is entitled to judgment in his favor regarding the claims for Sunshine Law violations.³ Defendant filed its competing "Defendants' Motion for Final Summary Judgment" on September 24, 2021, relating to all counts, contending that it is entitled to

³ Plaintiff's Motion only contains arguments concerning Counts I, III, and IV.

judgment in its favor based on the issues raised in its affirmative defenses. The Court held a hearing on both motions on November 5, 2021, where it heard arguments from both parties and took the matter under advisement. This Order follows.

SUMMARY JUDGMENT STANDARD

Under Florida’s summary judgment standard, like its federal counterpart, “the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fla. R. Civ. P. 1.510(a). A dispute is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party,” and a fact is material if it “might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

The moving party bears the initial burden of informing the court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). “In determining whether a movant has met this burden, [the Court will] review the evidence and all factual inferences therefrom in the light most favorable to the party opposing the motion.” *Hinesville Bank v. Pony Express Courier Corp.*, 868 F.2d 1532, 1535 (11th Cir. 1989). Once the movant does this, “the nonmoving party must come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (quoting Fed. R. Civ. P. 56(e)); *see also Anderson*, 477 U.S. at 257.

ANALYSIS AND RULING

Declaratory Action: Count I. Plaintiff moves for final summary judgment on Count I, a cause of action for declaratory judgment on the EPG’s purported violations of the Sunshine Law. Defendant counters that summary judgment should be granted in its favor instead because there

is no present controversy. The EPG, it argues, met in response to a local state of emergency, and is therefore not subject to the Sunshine Law.

Declaratory judgments exist to afford parties relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations. *Santa Rosa Cty. v. Admin. Com'n., Div. of Admin. Hearings*, 661 So. 2d 1190, 1192 (Fla. 1995) (citing *Martinez v. Scanlan*, 582 So. 2d 1167, 1170 (Fla. 1991)). The moving party must show that they are in doubt as to the existence or nonexistence of some right or status and that they are entitled to have such doubt removed. *Kelner v. Woody*, 399 So. 2d 35, 37 (Fla. 3d DCA (1981)). In this context, “[w]here agencies and boards have acted in a quasi-executive or quasi-legislative capacity, the proper method of attack is a suit in circuit court for declaratory or injunctive relief on grounds that the action taken is arbitrary, capricious, confiscatory or violative of constitutional guarantees.” *Building Code Advisory Bd. v. S. Bldg. Products, Inc.*, 622 So. 2d 10, 13 (Fla. 4th DCA 1993) (quoting *Bd. Of Cty. Comm'rs of Hillsborough Cty. v. Casa Dev. Ltd.*, 332 So. 2d 651 (Fla. 2d DCA 1976)). The Declaratory Judgment Act is not to be employed to determine purely factual issues under an instrument that is clear and unambiguous and presents no need for construction, nor should it be used to obtain legal advice from the court as to the correct procedure to follow in litigating a case. *Kelner*, 399 So. 2d at 38.

Section 286.011(1) requires “[a]ll meetings of any board or commission of any state agency or authority of any agency or authority of any county, municipal corporation, or political subdivision” where “official acts are to be taken **are declared to be public meetings open to the public at all times.**” (emphasis added). The minutes of these such meetings shall also be promptly recorded and open to public inspection. Fla. Stat. § 286.011(2). Additionally, regardless of how a committee or a board is formed, its meetings and deliberations are subject to

the Sunshine Law if that entity performs decision-making functions. *See Dascott v. Palm Beach Cty.*, 877 So. 2d 8, 11–12 (Fla. 4th DCA 2004); *see also Evergreen Tree Treasurers of Charlotte Cty., Inc. v. Charlotte Cty. Bd. of Cty. Comm’rs.*, 810 So. 2d 526, 531–32 (Fla. 2d DCA 2002) (“However, when, as here, public officials delegate their fact-finding duties and decision-making authority to a committee of staff members, those individuals no longer function as staff members but stand in shoes of such public officials insofar as application of Government in Sunshine Law is concerned.” (internal citations and quotations omitted)).

While Defendant argues the EPG is not subject to the Sunshine Law because it only had been delegated information-gathering or fact-finding authority, the record evidence shows that is not the case. The EPG was authorized to enact legally binding executive orders, which were enforceable and had the effect of law. This, by its very nature, is a decision-making act. Even though authority was given during a state of emergency, this delegated power did not excuse the EPG from comporting with the requirements outlined in the Sunshine Law, as Defendant argues.⁴ Furthermore, even though the EPG’s role has changed since March 2020, Defendant still can delegate (or re-delegate) authority to it, regardless of any gubernatorial executive order. To that end, the Court finds that summary judgment must be entered in favor of Plaintiff as to the declaratory action counts. Even though the EPG is no longer operating as it was when Plaintiff filed this suit (a body with decision-making authority), the Court is obliged to grant his request for a declaration. *See Anderson v. City of St. Pete Beach*, 161 So. 3d 548, 553–54 (Fla. 2d DCA 2014) (determining that even though the plaintiff’s primary remedy in bringing his claim based

⁴ Defendant largely relies on section 252.38(3)(a)5, Florida Statutes, for the proposition that because Osceola County was in a state of emergency, procedures and formalities otherwise required by law could be waived. However, the statute continues on to specifically enumerate which procedures and formalities may be waived, and waiver of the Sunshine Law is not included on this list. Notably, the Sunshine Law itself only contains a narrow exception for conducting meetings in the shade—when a public entity meets with legal counsel to discuss pending litigation. *See* Fla. Stat. § 286.011(8).

on violation of the Sunshine Law was already accomplished, the plaintiff was nevertheless entitled to a declaration stating the same). The Court, therefore, declares that EPG's meetings were subject to the Sunshine Law, section 286.011, Florida Statutes, and that Defendant Osceola County, who created the EPG, violated the Sunshine Law by not allowing public access to these meetings.

Declaratory Relief: Count II: Generally, Count II seeks a declaration that "notes, memos, vote records, and all other materials in relation to the EPG and EMWG, including but not limited to meetings, are subject to the Florida Public Records Act" and that Defendant violated the Act by refusing to provide such documents pursuant to Plaintiff's public records request. Because there is no record evidence that the documents requested by Plaintiff existed at the time the request was made, no violation of the Florida Public Records Act can be shown. Accordingly, Defendant is entitled to summary judgment as to Count II.

Mandamus Relief: Count III: Plaintiff contends that he is entitled to final summary judgment as to his claim for mandamus relief because Defendant failed to perform its ministerial duty to provide him with the requested records. In contrast, Defendant maintains that Plaintiff's request is now mooted because Osceola County is no longer in a state of emergency and the EPG's meetings were never subject to the Sunshine Law.

"Mandamus is defined as a remedy to command performance of a ministerial act that the person deprived has a right to demand, or a remedy where public officials or agencies may be coerced to perform ministerial duties that they have a clear legal duty to perform." *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996). When proving that a mandamus action lies in connection with a public records request, the moving "party must prove they made a specific request for public records, the [agency] received it, **the requested**

public records exist, and the [agency] improperly refused to produce them in a timely manner.”
O’Boyle v. Town of Gulfstream, 257 So. 3d 1036, 1040 (Fla. 4th DCA 2018) (emphasis added).

The record evidence here demonstrates that the EPG did not have any records to be turned over to Plaintiff. Because Plaintiff cannot point to any record evidence indicating the requested records exist, Defendant is entitled to summary judgment on Count III. *Id.*

Injunctive Relief: Count IV: Plaintiff seeks a permanent injunction to enjoin Defendant from meeting outside the Sunshine Law moving forward, including prohibiting it from holding open-to-the-public meetings without proper notice. Defendant counters that this Court has been rendered moot because there is no longer a state of emergency and the Governor’s Executive Order preempting local response efforts.

In order to obtain a permanent injunction, the movant must establish a clear legal right, an inadequate remedy at law, and that irreparable harm will arise without injunctive relief. *Liberty Counsel v. Fla. Bar Bd. of Gov.*, 12 So. 3d 183, 186–87 (Fla. 2009). Additionally, the Sunshine Law must be broadly construed to effect its remedial and protective purpose. *Everglades Law Ctr., Inc. v. S. Fla. Water Mgmt. Dist.*, 290 So. 3d 123, 128 (Fla. 4th DCA 2019) (continuing on to state that the statute “should be construed to frustrate all evasive devices”).

Consistent with the Court’s determination and declaration above that the EPG’s meetings were subject to the Sunshine Law and that they violated the Sunshine Law by prohibiting public access to these meetings, the Court finds that Plaintiff is entitled to the requested injunctive relief. Plaintiff has demonstrated a clear legal right as a resident of Osceola County to not only have notice and attend these meetings, but also have access to a record of these meetings, consistent with the spirit of the Sunshine Law. Plaintiff has no adequate remedy at law, as he

only seeks access to any meetings and records moving forward, which are subject to the provisions of the Sunshine Law. Finally, Plaintiff would suffer irreparable harm without permanent injunctive relief because if Defendant simply renames or changes an entity from a decision-making body to a non-decision-making body after violating the Sunshine Law, it could contravene the very spirit of the Sunshine Law. Having fulfilled all the elements for a permanent injunction, and in an effort to further the application and purpose of the Sunshine Law, the Court finds Plaintiff is entitled to a permanent injunction, enjoining Defendant from holding meetings of decision making bodies, such as the EPG as it existed in March, 2020, without proper notice and public access.

Accordingly, the following is hereby **ORDERED AND ADJUDGED**:

1. “Plaintiff’s Motion for Final Summary Judgment” is **GRANTED as to Counts I and IV**.
2. The Court **declares** that EPG’s meetings conducted during the state of emergency were subject to the Sunshine Law, section 286.011, Florida Statutes, and that Osceola County, who created the EPG, violated the Sunshine Law by not allowing public access to these meetings.
3. Defendant is hereby **enjoined** from allowing the EPG (as it existed during the state of emergency) to meet outside the Sunshine Law moving forward, including prohibiting it from holding open-to-the-public meetings without proper notice.
4. Defendants’ “Motion for Final Summary Judgment” is **GRANTED as to Count II**.
5. Defendants’ “Motion for Final Summary Judgment” is **GRANTED as to Count III**.
6. Any and all causes of action lodged against the EMWG are **moot**, as it did not meet during the relevant timeframe set forth in the Complaint.

7. Final judgment in this cause is **hereby entered in favor of Plaintiff Joshua Meyers as to Counts I and IV, and in favor of Defendant Osceola County as to Counts II and III.** Defendant shall take nothing by this action against Plaintiff as to Counts I and IV, and Plaintiff shall go hence without day as to Counts I and IV. Plaintiff shall take nothing by this action against Defendant as to Counts II and III, and Defendant shall go hence without day as to Counts II and III. The Court **reserves jurisdiction** over any claims made or to be made by either party for an award of costs and attorney's fees.

DONE AND ORDERED in Chambers, at Kissimmee, Osceola County, Florida, on this _____ day of _____, 2021.

Robert Egan 11/22/2021
ROBERT J. EGAN
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on NOVEMBER 22, 2021, a true and accurate copy of the foregoing was e-filed using the Court's ECF filing system, which will send notice to all counsel of record.

L. Haines
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Judicial Assistant