

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
DIVISION**

**TIM GRIFFIN, in his official capacity as  
Attorney General of Arkansas**

**Plaintiff**

v. Case No. \_\_\_\_\_

**ARKANSAS BOARD OF CORRECTIONS;  
BENNY MAGNESS, in his official capacity as  
Chairman of the Arkansas Board of Corrections;  
TYRONE BROOMFIELD, in his official capacity as  
Vice Chairman of the Arkansas Board of Corrections; and  
JOHN FELTS; DR. WILLIAM “DUBS” BYERS; DR. WHITNEY GASS;  
LEE WATSON; and ALONZA JILES, in their official capacities  
as board members of the Arkansas Board of Corrections**

**Defendants**

**COMPLAINT**

Tim Griffin, in his official capacity as Attorney General of Arkansas, for his complaint, states:

**INTRODUCTION**

1. This is an appeal from a denial of rights under the Arkansas Freedom of Information Act (FOIA) to redress three, independent FOIA violations: two illegal executive sessions held by the Arkansas Board of Corrections (“Board”) and a slew of improper responses to Plaintiff’s FOIA request to the Board for public records.

2. The Board purported to hire a special counsel with no public discussion on the matter and, as is made clear below, not a single piece of correspondence about whether to hire special counsel—let alone whether to hire a specific person.

3. Under Ark. Code Ann. § 25-19-107 and *Bryant v. Weiss*, 335 Ark. 534, 983 S.W.2d 902 (1998), the Attorney General has authority to bring a FOIA enforcement claim in his official capacity.

4. Plaintiff asks this Court to:

- a. void the Board's illegal agreement entered into with a special counsel because that agreement was the fruit of an illegal executive session;
- b. void the Board's decision to appoint an "Acting Executive-in-Charge" of Corrections because that decision was the fruit of an illegal executive session; and
- c. order that the Board fully respond to Attorney General Griffin's FOIA request.

#### **PARTIES**

5. Plaintiff is the duly elected Attorney General of Arkansas.
6. Defendant State Board of Corrections is a public entity subject to the FOIA.
7. The remaining Defendants are all members of the Board, named in their official capacities, and are public officials who are subject to the FOIA. They are collectively referred to as "the Board."

#### **JURISDICTION AND VENUE**

8. The Court has subject-matter jurisdiction under amendment 80, § 6 of the Arkansas Constitution and Ark. Code Ann. §§ 16-13-201 and 25-19-107.

9. The Court has personal jurisdiction over the parties under Ark. Code Ann. § 16-4-101.

10. Venue is proper in Pulaski County Circuit Court under Ark. Code Ann. § 25-19-107(a).

## THE BOARD'S DECEMBER 8, 2023 MEETING

11. Plaintiff re-alleges and incorporates by reference all the allegations contained in the foregoing paragraphs.

12. On December 8, 2023, the Board held a meeting. Any meeting the Board holds is a public meeting pursuant to the FOIA.

13. Under the FOIA, before a governing body enters into an executive session, it must state the “specific purpose of the executive session.” Ark. Code Ann. § 25-19-106(c)(1)(B).

14. During the December 8 meeting, the Board announced that it would go into executive session to consider an “employment matter.”

15. Under the FOIA, an executive session may be called to consider a “personnel matter” only for the purpose of “considering employment, appointment, promotion, demotion, disciplining, or resignation of *any public officer or employee.*” Ark. Code Ann. § 25-19-106(c)(1)(A) (emphasis added).

16. The Board’s executive session lasted approximately 45 minutes.

17. When the Board emerged from the executive session, Separate Defendant Lee Watson promptly made two motions.

18. In the first motion, Separate Defendant Watson moved that the Board “approve the hiring of special counsel to advise the Board regarding employment matters.” The Board voted 4-2 to hire special counsel.

19. Any special counsel is, by definition, not a public officer or employee of the Board.

20. In the second motion, Separate Defendant Watson moved that the Board “approve and sign an engagement agreement with Abtin Mehdizadegan.” The Board again voted 4-2 to retain Mr. Mehdizadegan for help in these undisclosed employment matters.

21. Mr. Mehdizadegan is not a public officer or employee of the Board, nor does his purported hiring making him one.

22. The Board took less than three minutes to vote on these motions after emerging from the executive session and did not engage in any public discussion or debate on either motion.

23. According to Department of Corrections spokeswoman, Dina Tyler, during the executive session the Board “discussed the hiring of Little Rock private practice attorney Abtin Mehdizadegan to “represent the Board” on “employment and hiring issues.” Exhibit 1 (December 13, 2023 Arkansas Democrat-Gazette article).

24. On December 11, 2023, Plaintiff sent a letter to Separate Defendant Magness notifying him that the Board’s actions on December 8, 2023, were illegal in two ways: (1) the Board’s executive session violated the open-meetings provisions of the FOIA, and (2) the Board violated Ark. Code Ann. § 25-16-702(a) by failing to first certify its need for legal counsel to the Attorney General before seeking to employ special legal counsel. Ex. 2 (December 11, 2023 Letter). Plaintiff’s letter gave the Board until December 15, 2023, to “reconvene and cure” their illegal actions. Ex. 2.

#### **ATTORNEY GENERAL’S DECEMBER 11, 2023 FOIA REQUEST**

25. Concerned by the Board’s total absence of public discussion about hiring special counsel and about hiring any specific attorney, Plaintiff sent a FOIA request to the Board on December 11, 2023. *See* Exhibit 3 (December 11, 2023 Attorney General FOIA request)

26. The request sought copies for six categories of public records:

- a. “all communications that discuss whether to hire an outside counsel”;
- b. “all memoranda prepared or received within the last year by any Board member or Board Employee regarding the hiring of outside counsel or Amendment 33”;

- c. “all communications with potential outside counsel . . . regardless of whether that specific outside counsel was retained”;
- d. “all engagement letters between the board and any outside counsel the Board has attempted to retain”;
- e. “all payments made to any outside counsel the Board has retained in this matter”; and
- f. “all documents provided to or received from the outside counsel the Board has retained in this matter.”

27. Late on Thursday, December 14, 2023, Defendants responded through Mr. Mehdizadegan with over 1,500 pages of documents—most of which were copies of public filings Defendants had already made in a separate Pulaski County Circuit Court case they filed that day.

28. None of the records produced were responsive to Plaintiff’s FOIA request for “communications that discuss whether to hire outside counsel.”

29. Under the FOIA, a custodian is required to certify that “no records exist” that are responsive to a specific request if that is the case. Ark. Code Ann. § 25-19-105(a)(3)(A).

30. Defendants failed to make the required certification that there are no records responsive to Plaintiff’s first request. This failure violates the FOIA and leaves one in doubt about whether there are responsive records.

31. None of the records Defendants produced were responsive to Plaintiff’s second request for “copies of all memoranda prepared or received within the last year by any board member or board employee regarding the hiring of outside counsel.”

32. Yet Defendants failed to make the required certification that there are no records responsive to Plaintiff's second request. This failure violates the FOIA and leaves one in doubt about whether there are responsive records.

33. None of the records Defendants produced were responsive to Plaintiff's third request for "copies of all communications with potential outside counsel in this matter, regardless of whether that specific outside counsel was retained."

34. Yet Defendants failed to make the required certification that there are no records responsive to Plaintiff's third request. This failure violates the FOIA and leaves one in doubt about whether there are responsive records.

35. None of the records Defendants produced were responsive to Plaintiff's fifth request for "all payments made to any outside counsel the Board has retained in this matter."

36. Yet Defendants failed to make the required certification that there are no records responsive to Plaintiff's fifth request. This failure violates the FOIA and leaves one in doubt about whether there are responsive records.

#### **DECEMBER 14, 2023 BOARD MEETING**

37. On December 14, 2023, the Board called a special meeting to occur at 2:00 p.m.

38. The agenda listed just two items of business. The first was titled "Letter from Attorney General Tim Griffin Reference Board of Corrections Meeting of December 8, 2023." See Exhibit 4 (December 14 Board Special Meeting agenda)

39. The second agenda item was simply titled Executive Session.

40. At the meeting, Separate Defendant Chairman Magness declared that the Board "did not violate the FOIA."

41. Separate Defendant Watson stated that certain recently enacted statutes violated the Arkansas Constitution, specifically Amendment 33, and such a conflict impacts personnel.

42. Separate Defendant Watson then moved to direct their special counsel to “take all legal action necessary” against Act 185 and Act 659, in order to “resolve the conflict” between the legislative acts and the Constitution of Arkansas.

43. The Board then went into executive session to discuss “personnel matters.”

44. The Board was in executive session for roughly 20 minutes.

45. After returning from its executive session, Separate Defendant Watson made a motion to suspend Secretary Joe Profiri with pay, until the Board could “clarify” his employment status.

46. The motion passed, and Profiri was suspended with pay.

47. Following the meeting, Separate Defendant Chairman Magness sent a letter to Governor Sanders and Attorney General Griffin, indicating that the “Board of Corrections will name an acting Executive in Charge of the Department of Corrections.” *See* Exhibit 5 (December 14, 2023, Letter to Governor Sanders and Attorney General Griffin).

48. Upon information and belief, later that day the Board named Jerry Bradshaw as the “Acting Executive-in-Charge” of the Department of Corrections.

49. The Board did this despite there being no mention of Bradshaw during their December 14 meeting.

50. Upon information and belief, the Board failed to provide the required advanced notice of the meeting at which it decided to appoint Bradshaw. *See* Ark. Code Ann. § 25-19-106(b)(2).

51. Under Ark. Code. Ann. § 12-27-104, “the Board of Corrections shall keep regular minutes of all its meetings, visits, and proceedings.”

52. There are no minutes available for any meeting after the 2:00 p.m. special meeting on December 14, 2023.

53. The FOIA requires all “open public meetings” to be “recorded in a manner that allows for the capture of sound.” Ark. Code Ann. § 25-19-106(d)(1).

54. Upon information and belief, the Board failed to make any kind of recording of the meeting at which the Board decided to appoint Bradshaw as the “Acting Executive-in-Charge.”

### **COUNT 1: DECEMBER 8 OPEN-MEETINGS VIOLATION**

55. Plaintiff re-alleges and incorporates all the allegations contained in the foregoing paragraphs.

56. The Board’s executive session on December 8, 2023 violated the FOIA.

57. Upon information and belief, the Board’s discussion in executive session included impermissible topics such as (1) whether to hire special counsel and (2) if so, which specific attorney to hire.

58. Hiring special counsel is not a permissible purpose for an executive session under the personnel-matters exception to the open-meetings rules.

59. Mr. Mehdizadegan is not a public officer or employee, and therefore § 25-19-106(c)(1)(A) does not apply.

60. Mr. Mehdizadegan also does not hold “the top administrative position in [a] public agency, department or office,” so Ark. Code Ann. § 25-19-106(c)(2)(A) does not apply.

61. Because the Board’s executive session was illegal, any decisions arrived at by virtue of that illegal executive session are void.



62. Also, because the engagement letter that the Board entered into with Mr. Mehdizadegan did not comply with Ark. Code Ann. § 25-1-1102, the engagement letter is null and void.

63. Therefore, the motion to hire special counsel and the motion to hire Mr. Mehdizadegan are illegitimate and illegal. Any steps that have been taken to hire Mr. Mehdizadegan, including any contracts signed between the parties, must be considered null and void.

**COUNT 2: DECEMBER 14 OPEN-MEETINGS VIOLATION**

64. Plaintiff re-alleges and incorporates all the allegations in the foregoing paragraphs.

65. At its December 14, 2023, special meeting, the Board suspended Secretary Profiri with pay.

66. Upon information and belief, sometime after the public portion of the special meeting was over, the Board named Jerry Bradshaw the “Acting Executive-in-Charge” of the Department of Corrections.

67. Bradshaw was announced as the “Acting Executive-in-Charge” in a news article published by Arkansas Business. *See* Exhibit 6 (December 14, 2023, Arkansas Business article).

68. Upon information and belief, Separate Defendant William “Dubs” Byers also called the Director of the Division of Corrections Dexter Payne on December 14, 2023, and told him that Bradshaw was now the “Acting Executive-in-Charge.”

69. The Board must comply with Ark. Code Ann. § 25-19-106(a), by holding its meetings and making its decisions in public.

70. If the Board makes a decision in an executive session, the decision is void unless it is announced following the executive session. Ark. Code Ann. § 25-19-106(c)(4).

71. The Board violated the open meetings provisions of FOIA when it named Jerry Bradshaw “Acting Executive-in-Charge” without holding a meeting.

72. Even if the Board did decide on Mr. Bradshaw as “Acting Executive-in-Charge” during its executive session, the Board still was required to announce that they did so upon returning from the executive session, and hold a public vote.

73. Because the decision is void, Jerry Bradshaw cannot serve as the “Acting Executive-in-Charge” at DOC, and any statement that he is the “Acting Executive-in-Charge” is invalid.

### **COUNT 3: OPEN-RECORDS VIOLATION**

74. Plaintiff re-alleges and incorporates all the allegations in the foregoing paragraphs.

75. The Board violated FOIA in its response to Plaintiff’s December 11, 2023, FOIA request.

76. The Board did not provide any responsive documents to some of the Plaintiff’s FOIA requests.

77. If the Board truly does not have any responsive records to those requests, the Board is required to certify that fact. But the Board did not make any such certification.

78. If the Board has responsive records but believes those records are exempt, the FOIA requires the Board to cite the specific exemption on which it is relying. But the Board failed to cite any such exemption.

79. Therefore, this Court must order the Board to properly respond to Plaintiff’s FOIA request and should be ordered to disclose all responsive documents or provide the statutorily required responses.

### **PRAYER FOR RELIEF**

80. The Plaintiff requests the Court set this matter for hearing within seven days, or as soon as possible. *See* Ark. Code Ann. § 25-19-107(b).

Wherefore, the Attorney General asks the Court:

- To declare that the Board acted illegally when it went into executive session on December 8, 2023;
- To enjoin the Board from employing Mr. Mehdizadegan as special counsel;
- To enjoin the Board from employing special counsel through an illegal executive session in the future;
- To declare that the Board acted in violation of the FOIA when it named Mr. Bradshaw “Acting Executive-in-Charge”;
- To enjoin the Board from acting in furtherance of its illegal decision to declare Jerry Bradshaw as its “Acting Executive-in-Charge”;
- To declare that the Board failed to adequately respond to Plaintiff’s FOIA request;
- To order the Board to fully and properly respond to Plaintiff’s FOIA request; and
- For all other just relief to which he is entitled.

Respectfully submitted,

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Attorney General

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**CERTIFICATE OF SERVICE**

I, Justin Brascher, hereby certify that on December 15, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

/s/ Justin Brascher  
Justin Brascher