

IN THE CIRCUIT COURT OF THE  
17TH JUDICIAL CIRCUIT IN  
AND FOR BROWARD COUNTY,  
FLORIDA

KNIGHT RIDDER, INC., Publisher of  
**THE MIAMI HERALD**, and WANDA  
DeMARZO,

CASE NO: 04-06327 (13)

Plaintiffs,

vs.

KEN JENNE, Sheriff of Broward County  
and Custodian of Records for the  
Broward Sheriff's Office,

Defendant.

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**ORDER ON MOTION FOR WRIT OF MANDAMUS**  
**and**  
**MOTION TO DISMISS**

THIS CAUSE having come on to be heard on May 11 on Plaintiffs' request for entry of a writ of mandamus and the motion to dismiss of Defendant Ken Jenne (the "Sheriff). The Court has considered the testimony of the witnesses presented at the hearing, considered argument of counsel, and conducted an in camera review of a portion of the records at issue and makes the following findings of fact and conclusions of law and issues the following orders:

Findings of Fact and Conclusions of Law

Plaintiffs (collectively, the "*Herald*") made a public records request for what has been described as the daily journals or daily planners of three Broward Sheriff's Office employees: Lt. Julian Ulvang, Captain William Robshaw, and Captain Larry Hodgman. The Sheriff refused to produce the journals to the *Herald* asserting that the journals were not public records, and if they

were public records, there are statutory exemptions that would preclude their release.

All three Sheriff's Office employees testified at the hearing on May 11, 2004. All three employees substantially testified as follows:

The journals were bought by the employee with personal funds;

The journals were used for both personal and Broward's Sheriff's Office matters;

As they related to Broward Sheriff's Office matters, the entries were made in connection with the deputies' transaction of official business of the Broward Sheriff's Office;

As they related to Broward Sheriff's Office official business, the journals were used by the officers to refresh or record their recollections to assist them in the course of their duties as officers of the Broward Sheriff's Office;

Two of the officers kept the journals, at least for a period of time, in their offices at the Broward Sheriff's Office;

As they related to Broward Sheriff's Office matters, the journals were the only way the officers kept records of their official appointments;

No supervisor or other third party reviewed the journals and the journals were not circulated for review by anyone.

Notations relating to open criminal investigations, criminal intelligence, open professional compliance investigations were made in the journals;

The journals also included notations relating to closed criminal investigations, inactive criminal intelligence matters, and closed professional compliance investigations;

The journals were secured in the officers' offices for privacy and/or brought home at night by the employee;

All of the employees had an expectation of privacy over their personal journals;

All of the journals contain personal entries in addition to the official Broward Sheriff's Office entries;

- To the extent these entries were used to create other records, these entries were precursors to formal reports drafted by the respective authors.
- The journals were provided to the State Attorney's Office under the authority of a subpoena.

Copies (or certain portions copied by the State Attorney's Office who possessed the originals) were presented to the Court for an *in camera* review. The Court finds from its review of a portion of the journals that the overwhelming type of material in the journals in question are personal in nature, contain personal information, are private and are owned by the person who bought the journal that compiled it and authored it. They contain the thoughts, ideas, and impressions of the officer who also authored the journals.

The Court concludes that the right to privacy in this case outweighs the public's need to know, and there is no reason why the journals could not be redacted to limit what is produced to matters relating to the transaction of the official business of the Broward Sheriff's Office. The right of an individual to be secure in his persons, places, and things in this situation outweighs the right of the information to be spread through any media. The rights of these deputies who owned and entered the information is no less than the average citizen because they happen to be deputies. The journals at issue are not public records. Therefore, the need for the Sheriff to assert and present evidence of a public records exemption is moot.

To rule otherwise would have an enormous chilling affect on the right of privacy -- privacy guaranteed by the Florida Constitution. A contrary ruling would conflict with common sense and would be in violation of the social contract that we all recognize and respect that

governs our lives and our interactions with other people.

It is therefore, ORDERED that Plaintiffs' Writ of Mandamus is DENIED. Defendant's Motion to Dismiss is also DENIED. The court retains jurisdiction for enforcing whatever other public records requests may be lawful in nature and are pending.

ORDERED in Chambers at Fort Lauderdale, Broward County, Florida on the \_\_\_\_ day of \_\_\_\_\_, 2004.

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LEROY H. MOE  
CIRCUIT COURT JUDGE

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