

**Tower, Nancy (NT)**

**From:** Tower, Nancy (NT)  
**Sent:** Monday, July 28, 2008 11:01 AM  
**To:** 'Arlene Blanchard'  
**Subject:** FOIA request

The FOIA request that I filed on Friday, July 25, should result in documents being available to me no later than close of business on Wednesday, July 30.

Since I will be out of town, I want to make it clear that the documents should still be available at that time and I will be able to receive them by e-mail at [tower520@bellsouth.net](mailto:tower520@bellsouth.net) as a document attachment or as a scanned attachment.

Also, just in case I do not receive them by e-mail or there is a problem accessing the file, I will call you on Thursday with a fax number to have the information faxed to me at my location.

Thank you.

8/22/2008

Nancy Tower  
(Plaintiff)

14<sup>TH</sup> JUDICIAL DISTRICT COURT

vs. No. 0008-00 Div. "F"  
4285

PARISH OF CALCASIEU

City of Sulphur  
(Defendant)

STATE OF LOUISIANA

Filed: \_\_\_\_\_

Deputy Clerk of Court

### COMPLAINT FOR MANDAMUS

NOW INTO COURT, comes NANCY TOWER, a resident of and domiciliary of the City of Sulphur, Parish of Calcasieu, Louisiana, and a current member of the Sulphur City Council, who respectfully shows:

1. This is an action under the Public Records Laws of Louisiana to compel the City of Sulphur to provide the documents requested in writing by Nancy Tower on Friday, July 25, 2008.
2. The documents requested were: "A copy of the draft Land Use information and all related files provided to the City of Sulphur by Timothy Jackson and or Steven Villavoso."
3. The Fourteenth Judicial Court, Parish of Calcasieu has jurisdiction over the action pursuant to LRS 44:35(A).
4. Defendant, City of Sulphur, is a Home Rule Charter Municipality and is the custodian over the records that Plaintiff seeks.
5. On July 9, 2008, in a written memo to the mayor's office, council member Nancy Tower requested a copy of the information provided to the City by Timothy Jackson and or Steven Villavoso, who were experts retained by and paid by the City of Sulphur, regarding their expert review and suggestions related to the City's Land Use Ordinance.
6. On July 11, 2008, in a memo from John Bruce regarding the above request, plaintiff was informed that the documents were "not ready for outside input."
7. On July 14, 2008, a follow up request was faxed to the Sulphur Mayor's office requesting "the draft ASAP."
8. The lack of response to this request resulted in a conversation with Public Works director, John Bruce, in the presence of Inspector Keith Berry, on July 21, at which time plaintiff asked for the documentation again and communicated that a FOIA request would be filed if the information was not provided by July 24.
9. By e-mail dated July 24, John Bruce communicates to plaintiff that "Tim Jackson's two 'work in progress' reports have been provided to Skipper Drost. Please contact him for release of the information." (Skipper Drost is the current City Attorney for the City of Sulphur.)
10. By e-mail dated July 25, 2008, plaintiff requested to Skipper Drost that the documents be made available for her to pick up.

OFFICE OF CLERK OF COURT  
2008 AUG -8 PM 12:08  
CALCASIEU PARISH, LOUISIANA

11. By response e-mail dated July 25, 2008, Skipper Drost replied to plaintiff's FOIA request, "I will not distribute work in progress until the package is complete."
12. A later e-mail from Skipper Drost, dated July 29, suggests that plaintiff should wait for the "preliminary report," which should be made available to the Council and Land Use Commission on August 11.
13. Neither the response from John Bruce, nor the response from Skipper Drost completely address the plaintiff's request, which is not only for the draft report(s) but for all documentation from the contractor related to Land Use issues.
14. The denied request resulted in the filing of the FOIA with a memo and completed "Public Information Form" at Sulphur City Hall on the afternoon of July 25, 2008.
15. As of the filing of this complaint, the information has still not been made available to the plaintiff. More than three working days have transpired.
16. Plaintiff seeks the documentation for three reasons:
  - a. Plaintiff was involved in the original drafting of the zoning ordinance, which the council adopted in November of 2003 and is very interested in the Land Use Ordinance updates. Plaintiff, along with the other members of the City Council, requested that this contractor be hired to provide this information.
  - b. Having the information in hand to review in advance of the presentation by the contractor would allow for a more intelligent discussion. The contractor has been told by the City to direct all correspondence to the Public Works Director, thereby limiting access of council members, which would require that all interaction take place at the meeting. It is part of plaintiff's responsibility to fully understand and ask questions so that she may make reasonable decisions for the benefit of the City; petitioner needs to review the draft document(s) to prepare and to contemplate any amendments.
  - c. The contractor had been asked specifically about his opinion on two land use issues, which are on-going matters of disagreement between the plaintiff and the defendant. It is the plaintiff's belief that the opinion of the contractor should be provided to the council as soon as possible to help address these issues of disagreement so that corrective action may be taken quickly.
17. Plaintiff has a statutory right to the records being sought and there is no legal basis for the defendant's refusal to disclose them.

WHEREFORE, plaintiff requests that this Court:

Issue a writ of MANDAMUS to the defendant ordering the City of Sulphur to show cause on a day and date to be set by this Court why the following relief should not be

granted:

- 1) Declare that defendant's refusal to disclose the records requested by plaintiff is unlawful;
- 2) Order the defendant to make all the requested records available to the plaintiff immediately in accordance with law;
- 3) Award plaintiff her costs and, if it becomes necessary for plaintiff to retain the services of an attorney at law, award reasonable attorney fees in this action and

4) Grant such other and further relief as the law and this Court may deem just and proper.

Respectfully submitted,

IN PROPER PERSON

Nancy Tower  
District Four Council Member  
City of Sulphur  
520 N. Lebanon  
Sulphur, La. 70663

ORDER

Considering the foregoing petition,

Let the City of Sulphur show cause on the \_\_\_\_ day of \_\_\_\_\_, 2008, why the

Mandamus should not be granted and why the relief prayed for herein should not be granted.

Signed at Lake Charles, Louisiana this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
DISTRICT JUDGE

**Please Serve:**  
City of Sulphur  
Through Mayor Ron Leleux  
500 North Huntington St.  
Sulphur, La. 70663

*chnital stage (civil records) - sent to "suite" today 8-14-08*

**Skipper M. Drost**

Attorney at Law

One Lakeshore Drive, Suite 100

Lake Charles, LA 70629

Phone: (337) 436-4546 Fax: (337) 436-3091

[sdrost@drostlawfirm.com](mailto:sdrost@drostlawfirm.com)[www.drostlawfirm.com](http://www.drostlawfirm.com)

October 16, 2008

Mr. David H. Hanchey  
The Hanchey Law Firm, L.L.C.  
535 East Street  
Lake Charles, Louisiana 70601

Re: Nancy Tower v. City of Sulphur, Complaint for Mandamus, 2008-0042385,  
Division "E," 14<sup>th</sup> Judicial District Court, Calcasieu Parish, Louisiana.

Dear David:

I understand that your client, Nancy Tower, has agreed to dismiss her public records suit against the City of Sulphur. Part of the consideration for her dismissal of this cause is confirmation by the City that it will, in the future, follow the requirements of the Louisiana Public Records Law. Please be advised that the City of Sulphur fully intends, as always, to comply with all State Law, including the State's Public Records Laws, and I will continue to advise City Officials of that responsibility.

As you know, your client's request for documents includes materials which I believed then and still believe may be protected from disclosure by the attorney/client communication privilege as well as the public records laws exceptions regarding pending litigation. Moreover, I did not believe that a rough draft of a draft proposal was a public record, disclosure of which was required by Louisiana law. Rather than litigate this issue, the City of Sulphur will agree that the drafts of such documents submitted by the City's consultant to the City are records that will be provided to Nancy Tower upon her request.

By reference to the foregoing I do not mean to limit the City's compliance with the Public Records Laws to these issues only. I shall continue to recommend compliance with the Public Records Laws, not only with respect to requests by Nancy Tower, but to requests from others as well.

Sincerely,

  
Skipper M. Drost

City Attorney

**JONES, TÊTE, FONTI & BELFOUR, L.L.P.**

ATTORNEYS AT LAW

POST OFFICE BOX 1930

LAKE CHARLES, LOUISIANA 70602-1930

TELEPHONE (337) 439-8315

SAM H. JONES (1997-1978)  
WILLIAM R. TÊTE (1919-2006)

STREET ADDRESS:  
FIRST FEDERAL BUILDING  
1135 LAKESHORE DRIVE  
SIXTH FLOOR  
LAKE CHARLES, LA 70601

EDWARD J. FONTI  
GREGORY W. BELFOUR  
ROBERT J. TÊTE

TELEFAX (337) 438-5608  
TELEFAX (337) 433-5536

October 15, 2008

Mr. David H. Hanchey  
The Hanchey Law Firm, L.L.C.  
535 East Street  
Lake Charles, Louisiana 70601

VIA FAX TRANSMISSION  
436-5552

Re: Nancy Tower v. City of Sulphur, Complaint for Mandamus, 2008-0042385,  
Division "E," 14<sup>th</sup> Judicial District Court, Calcasieu Parish, Louisiana

Dear David:

Confirming our conversation of October 14, 2008, Skipper Drost has agreed to submit a letter to you for transmission to Nancy Tower confirming that the City will comply with the requisites of Louisiana's public records laws, that the documents we have previously offered to you which we believe are responsive to her public records request are available for review and copying, and that I will forward to your office our firm's check in the amount of \$500.00 in payment of your attorney's fees, and will pay court costs.

Skipper's letter will likely follow the outline you and I discussed last week.

I understand that upon your receipt of this letter you will request the hearing presently scheduled for October 21, 2008, be removed from the docket.

Sincerely,



GREGORY W. BELFOUR

GWB/mna

cc: Mr. Skipper M. Drost (via fax: 436-3091)