

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 0712

CORPORATION FOR LOUISIANA ECONOMIC  
DEVELOPMENT AND CHARLES R. ELKINS, II

VERSUS

THE LOUISIANA DEPARTMENT  
OF ECONOMIC DEVELOPMENT (“DED”);  
MICHAEL J. OLIVIER, SECRETARY OF DED;  
AND RICHARD HOUSE, DED GENERAL COUNSEL

Judgment Rendered: September 15, 2006.

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On Appeal from the  
19th Judicial District Court,  
In and for the Parish of East Baton Rouge,  
State of Louisiana  
Trial Court No. 532,724

Honorable Curtis Calloway, Judge Presiding

\* \* \* \* \*

L. Phillip Canova, Jr.  
Plaquemine, LA

Attorney for Plaintiffs/Appellants,  
Corporation for Louisiana  
Economic Development,  
and Charles R. Elkins, II

Daryl K. Manning  
Baton Rouge, LA

Attorney for Defendants/Appellees,  
DED; Michael J. Olivier, Secretary of  
DED; and Richard House, DED  
Executive Counsel

\* \* \* \* \*

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

**CARTER, C. J.**

The Corporation for Louisiana Economic Development and Charles R. Elkins, II, (plaintiffs) appeal the trial court's judgment dismissing their suit brought under the Public Records Act. Specifically, plaintiffs contend they are entitled to a writ of mandamus ordering the Secretary of the Louisiana Department of Economic Development (DED) to certify that no rules (the "public records" that plaintiffs requested) have been promulgated in accordance with LSA-R.S. 47:6007D(1).<sup>1</sup> DED admitted in its answer that no such documents ever existed.

DED's answer stating that the documents never existed satisfies the requirements of LSA-R.S. 44:34. See Hunter v. Pennington, 98-1821 (La. App. 4 Cir. 1/20/99), 726 So.2d 1082, 1084. In fact, the answer goes beyond the requirement of certifying that the documents are not in the custodian's possession and control and includes a judicial admission that the documents have never existed. Accordingly, mandamus is not appropriate in this case. Cf. Chapman v. District Attorney, 05-0577 (La. App. 1 Cir. 3/29/06), \_\_\_ So.2d \_\_\_, \_\_\_. Further, plaintiffs are not entitled to penalties and attorney's fees under LSA-R.S. 44:35.

The trial court's judgment is affirmed in accordance with Uniform Court of Appeal Rule 2-16.1B. Costs of this appeal are assessed to the Corporation for Economic Development and Charles R. Elkins, II.

**AFFIRMED.**

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<sup>1</sup> DED complied with the remainder of plaintiffs' public records request by turning over responsive documents.