

Upshur County District Attorney's Office
Texas Public Information Act Office
405 N Titus St
Gilmer, TX 75644

July 20, 2022

To Whom It May Concern:

Pursuant to the Texas Public Information Act, I hereby request the following records:

- A copy of any formal complaint(s) filed against the City of Big Sandy alleging any violation of the Texas's Public Information Act received between January 1, 2017 to July 19, 2022.
- This request includes, but not limited to:
 - o Any document or email sent to, or received from the Complainant.
 - o Any document or email sent to, or received from the City of Big Sandy.
 - o Any internal document or email generated by the Upshur County District Attorney's Office in response to the Complaint(s).

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 10 business days, as the statute requires.

Sincerely,

Stuart Martin

View request history, upload responsive documents, and report problems here:
<https://www.muckrock.com/respond/1324307/>

If prompted for a passcode, please enter:
CXPWNCKP

Filed via MuckRock.com
E-mail (Preferred): 131730-08723452@requests.muckrock.com

PLEASE NOTE OUR NEW ADDRESS
For mailed responses, please address (see note):
MuckRock News
DEPT MR 131730
263 Huntington Ave
Boston, MA 02115

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

Received July 29, 2020

Jack Winters
PO Box 9418
Tyler TX 75711

July 27, 2020

Billy Byrd
District Attorney
405 North Titus
Gilmer, TX 75644

Mr. Byrd,

Pursuant to Section 552.3215 of the Texas Public Information Act, this letter services as a Formal Complaint against Tim Scott, Chief of Police for the City of Big Sandy, Texas.

This complaint alleges that Mr. Scott has failed to provide the documents I have requested through Texas's Public Information Act. Payment has been made as required and Mr. Scott has made no attempt to provide the responsive documents.

Below is a timeline of my request.

10/25/19	Initial request for Big Sandy's Policy and Procedure Manual.
11/01/19	Reply from Mr. Scott with itemized estimate.
11/20/19	My letter to OAG alleging overcharges by Mr. Scott.
12/20/19	Letter from OAG to Mr. Scott requesting answers on how charges were determined.
01/10/20	Letter from Mr. Scott responding to OAG's 12/20/19 request.
02/11/20	Letter from OAG to Mr. Scott clarifying Big Sandy's PIA requirements.
02/20/20	Email from Big Sandy's attorney amending Mr. Scott's estimate.
02/21/20	Payment USPS Money Order 26472141066 by Certified Mail with Return Receipt. Tracking Number 7019 2280 0000 3245 7495.
06/02/20	My follow up letter to Big Sandy's attorney requesting the responsive documents. Sent Certified Mail with Return Receipt. Tracking Number 7019 2280 0000 3245 7518.
06/24/20	Informal Complaint filed with OAG. (Online only – no confirmation received)
07/27/20	Formal Complaint filed with Upshur County District Attorney.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jack Winters', with a large initial 'J' and a long, flowing tail.

Jack Winters

Enclosures:

- Encl 1 – Initial Request
- Encl 2 – Reply from Mr. Scott
- Encl 3 – My letter to OAG
- Encl 4 – Letter from OAG to Mr. Scott (Number 1)
- Encl 5 – Letter from Mr Scott to OAG
- Encl 6 – Letter from OAG to Mr. Scott (Number 2)
- Encl 7 – Email from Attorney amending estimate
- Encl 8 – Payment receipt with return receipt
- Encl 9 – Follow up letter to Attorney requesting documents

Jon Warren

From: Jon Warren <jon.warren@countyofupshur.com>
Sent: Wednesday, July 29, 2020 2:34 PM
To: 'lnb@flowersdavis.com'
Subject: Open records complaint

Our office has received two complaints concerning TPIA violations against Big Sandy PD. Jack Winters, P.O. Box 9418, Tyler Texas, filed the complaint by mail and it contains documents including Attorney General Reference ID# 810941.

I spoke with chief Tim Scott and he advised the matter had been sent to you.

The DA requested that I contact you to determine the status of the information request.

One complaint is in reference to Policy and Procedures Manual and the other involves Tim Scott "employee file".

Thanks

Jon Warren
Investigator
Upshur County
Criminal District Attorney's Office

Billy Byrd

From: Billy Byrd <billy.byrd@countyofupshur.com>
Sent: Thursday, September 10, 2020 2:57 PM
To: Jwinters0@protonmail.com
Subject: Response
Attachments: Jack Winters Response.pdf

See attached letters and documents. The same is being sent by regular United States Mail.

This is in response to your complaint and request for document(s). This office only has one written document responsive to your request. You will also find attached my formal letter to Chief Tim Scott.

Respectfully,



Billy W. Byrd
Criminal District Attorney
Upshur County
District Attorney's Office
405 North Titus
Gilmer, Texas 75644
(903)-843-5513
(903)-843-3661 – Fax

STATEMENT OF CONFIDENTIALITY

The contents of this e-mail and its attachments are intended solely for the addressee(s) hereof. In addition, this e-mail transmission may be confidential and it may be subject to privilege protecting communications between attorneys and their clients. If you are not the named addressee, or if this message has been addressed to you in error, you are directed not to read, disclose, reproduce, distribute, disseminate or otherwise use this transmission. Delivery of this message to any person other than the intended recipient(s) is not intended in any way to waive privilege or confidentiality. If you have received this transmission in error, please alert the sender by reply e-mail; we also request that you immediately delete this message and its attachments, if any.



Billy W. Byrd
Criminal District Attorney
Upshur County
District Attorney's Office
405 North Titus
Gilmer, Texas 75644
(903)-843-5513
(903)-843-3661 – Fax

STATEMENT OF CONFIDENTIALITY

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Jack Winters
PO Box 9418
Tyler TX 75711-9418
(903) 617-0413
Jwinters0@protonmail.com

~~Received July 27, 2020~~
September 10, 2020
BWB

September 4, 2020,

Billy Byrd
District Attorney
405 North Titus
Gilmer, TX 75644

Pursuant to Texas Government Code, Chapter 552, I hereby request the following records:

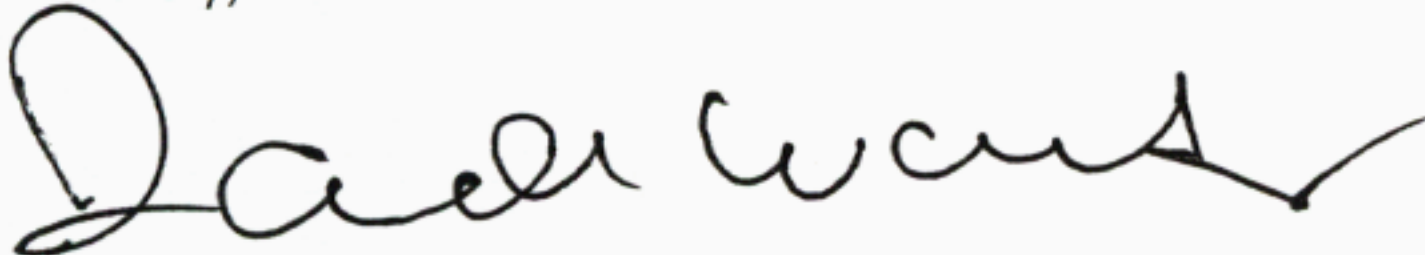
- The following documents are related to a Formal Complaint filed on or about July 27, 2020 against Tim Scott, Chief of Police Big Sandy Texas, alleging the violation of the Texas's Public Information Act - Jack Winters 10/25/19 request for the Department's Police and Procedure Manual.
 - Please provide a copy of any communication(s) sent to or received from the City of Big Sandy.
 - Please provide a copy of any communication(s) sent to or received from Big Sandy's Attorney.
 - Please provide a copy of the communication sent to Jack Winters that was required by Texas Statute 552.3215(g)(2) regarding the Formal Complaint.

I ask the request be filled electronically, by e-mail attachment, CD-ROM or flash drive if available. Should the information not exist in electronic format I will accept a paper copy.

In the event that there are any fees, please provide an itemized statement detailing the total charges required to fulfill my request.

Thank you in advance for your cooperation in this matter. I look forward to receiving your response to this request.

Sincerely,



Jack Winters

Received September 10, 2020
@ 10:20 A.M.

Jack Winters
PO Box 9418
Tyler TX 75711-9418
(903) 617-0413
Jwinters0@protonmail.com

September 4, 2020,

Billy Byrd
District Attorney
405 North Titus
Gilmer, TX 75644

Pursuant to Texas Government Code, Chapter 552, I hereby request the following records:

- The following documents are related to a Formal Complaint filed on or about July 27, 2020 against Tim Scott, Chief of Police Big Sandy Texas, alleging the violation of the Texas's Public Information Act - Jack Winters 2/10/20 request for Tim Scott's employee file.
 - Please provide a copy of any communication(s) sent to or received from the City of Big Sandy.
 - Please provide a copy of any communication(s) sent to or received from Big Sandy's Attorney.
 - Please provide a copy of the communication sent to Jack Winters that was required by Texas Statute 552.3215(g)(2) regarding the Formal Complaint.

I ask the request be filled electronically, by e-mail attachment, CD-ROM or flash drive if available. Should the information not exist in electronic format I will accept a paper copy.

In the event that there are any fees, please provide an itemized statement detailing the total charges required to fulfill my request.

Thank you in advance for your cooperation in this matter. I look forward to receiving your response to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Winters", with a long horizontal flourish extending to the right.

Jack Winters



BILLY W. BYRD
CRIMINAL DISTRICT ATTORNEY
UPSHUR COUNTY

405 N. Titus Street, Gilmer, TX 75644
903-843-5513 • FAX 903-843-3661

September 10, 2020

Chief Tim Scott
Big Sandy Police Department
P.O. Box 986
Big Sandy, Texas 75755

Sent via facsimile (903) 636-5033

Dear Chief Scott:

I write to inform you that a gentleman named Jack Winters has filed a formal complaint against you, for violating the Texas Public Information Act, pursuant to Section 552.3215 of that Act.

I have reviewed the complaint. If what is stated by Mr. Winters is correct, he has paid for records back in February and has not received those records. This would be a violation of the Texas Public Information Act without any exceptions claimed.

Therefore, pursuant to Texas Government Code 552.3215(j), I am providing you written notice of my determination. Pursuant to this section you will have four days of receiving my letter to cure the violation and provide the records to Mr. Winters. If you have provided the records, please provide proof of this to me prior to four days expiring. If you have provided the records or if you cure the violation within the next four days after receiving this letter and provide that proof, then no formal action will be taken pursuant to section 552.3215 noted above and the basis of the complaint filed with me.

Respectfully,

Billy W. Byrd
BWB/mt

TRANSACTION REPORT

SEP/10/2020/THU 02:20 PM

FAX(TX)

#	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
001	SEP/10	02:20PM	9036365033	0:00:26	2	MEMORY OK	SG3 3031



BILLY W. BYRD
CRIMINAL DISTRICT ATTORNEY
UPSHUR COUNTY

405 N. Titus Street, Gilmer, TX 75644
903-843-5513 • FAX 903-843-3661

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, THE EMPLOYEE, OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE (COLLECT), AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

DATE: September 10, 2020 NUMBER OF PAGES 2

PLEASE DELIVER THE FOLLOWING PAGES TO:

TO: Chief Tim Scott

FAX# (903) 1636-5033

LOCATION: Big Sandy Police Department

FROM: McKenna Thomas per
Billy Byrd's request.

Fax (903) 843-3661 Felony ☒
Fax (903) 843-2637 Misdemeanor

COMMENTS: _____

BILLY W. BYRD
CRIMINAL DISTRICT ATTORNEY
UPSHUR COUNTY



FILE COPY

BILLY W. BYRD
CRIMINAL DISTRICT ATTORNEY
UPSHUR COUNTY

405 N. Titus Street, Gilmer, TX 75644
903-843-5513 • FAX 903-843-3661

September 11, 2020

Jack Winters
P.O. Box 9418
Tyler, Texas 75711-9418

Sent via Certified U.S. mail.

Dear Mr. Winters:

After sending my letter to Chief Tim Scott on September 10, 2020, I was then provided evidence that the documents you requested and paid for had been sent to you August 6, 2020 and were received by you August 24, 2020. See attached Exhibit "B" consisting of five pages. The response from Big Sandy was given within four days.

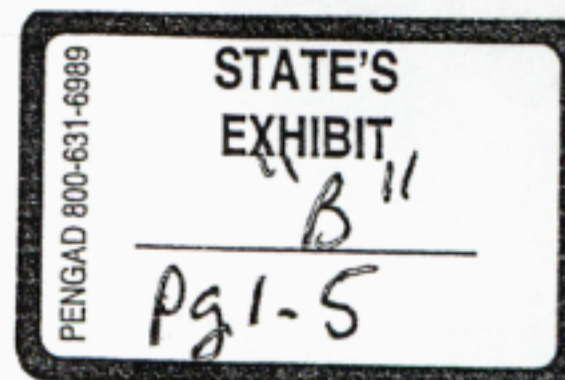
Pursuant to Texas Government Code Section 552.3215, which is Declaratory Judgment or Injunctive Relief which was the basis of your complaint. I find that the records have been produced and therefore there is no need for any action on the part of the Upshur County Criminal District Attorney's Office and this matter is closed.

Respectfully,

Billy W. Byrd
BWB/mt

cc: Enclosures

FLOWERS ♦ DAVIS, P.L.L.C.



CELIA C. FLOWERS
MELANIE S. REYES
WILLIAM R. KNIGHT, JR.
J. SCOTT MILLER
CATHERINE CHESLEY GOODGION
COREY R. KELLAM
MAYA P. JEDLICKA
JORDAN C. MULLINS
KATRYNA R. WATKINS
D. LANE BROWN
ALAN W. TOMME, OF COUNSEL
A. D. (DEAN) CHAPMAN, OF COUNSEL
THOMAS H. BUCHANAN, OF COUNSEL

1021 ESE LOOP 323, SUITE 200
TYLER, TEXAS 75701
MAIN TELEPHONE: (903) 534-8063
FACSIMILE: (903) 534-1650
WWW.FLOWERSDAVIS.COM

LONGVIEW OFFICE:
1516 JUDSON ROAD
LONGVIEW, TEXAS 75601
TELEPHONE: (903) 757-8900
FACSIMILE: (903) 757-8902

DALLAS OFFICE:
1200 MAIN ST., SUITE 208
DALLAS, TEXAS 75202
TELEPHONE: (214) 205-6146

ROBERT S. DAVIS
CHAD C. ROOK
LEE I. CORREA
PRESTON W. MCGEE
ROBIN H. O'DONOGHUE
J. MITCHELL BEARD
STEVE M. MASON

IMMIGRATION:
VIRGINIA D. YOUNG
DANIEL C. ROSS
TELEPHONE: (903) 592-8186

August 6, 2020

Jack Winters
PO Box 9418
Tyler, Texas 75711

Via CMRRR: 7017 3040 0001 0754 2654
and Regular Mail

Re: Big Sandy Police Department Policy and Procedures Manual

Dear Mr. Winters:

Per your request, enclosed please find the Big Sandy Police Department Policy and Procedures Manual.

Again, we apologize for the miscommunication and delay due to the COVID-19 pandemic.

Please call me if you have any questions on my cell phone at (903) 520-4525.

Very truly yours,

Robert S. Davis

RSD/Inb

Encl.

UNITED STATES POSTAL SERVICE
NORTH TEXAS TX 750

24 AUG 2020 PM 8 L

TYLER TX 75701

First Class Mail
Postage & Fees Paid
USPS
Permit No. 10

AUG 24 2020

USPS - 75701

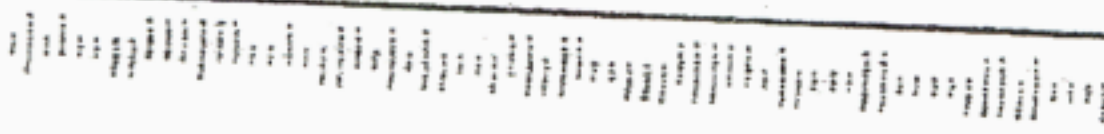
• Sender: Please print your name, address, and ZIP+4® in the box.


FLOWERS - DAVIS, P.L.L.C.
1021 ESE Loop 323, Suite 200
Tyler, TX 75701

TYLER

AUG 6 2020

2020



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature X </p> <p style="text-align: right;"> <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee </p>	
<p>1. Article Addressed to:</p> <p>JACK WINTERS PO BOX 9418 TYLER, TEXAS 75711</p>		<p>B. Received by (Printed Name) JACK WINTERS</p>	<p>C. Date of Delivery 8/24</p>
<p>CITY - BIG SANDY</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p>	
<p>7017 3040 0001 0754 2654</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	

PS Form 3811, July 2013

Domestic Return Receipt



BILLY W. BYRD
CRIMINAL DISTRICT ATTORNEY
UPSHUR COUNTY

405 N. Titus Street, Gilmer, TX 75644
903-843-5513 • FAX 903-843-3661

September 10, 2020

Jack Winters
P.O. Box 9418
Tyler, Texas 75711-9418
Jwinters0@protonmail.com

Sent via email and regular U.S. mail.

Dear Mr. Winters:

I am responding to your complaint received by me on or about July 29, 2020. Additionally, this will serve as a response to your open records request received today, September 10, 2020. I have one email attached as exhibit "A" that is responsive to your request. Pursuant to your Texas Public Information request, I release this to you.

In response to your formal complaint pursuant to Section 552.3215 of the Texas Government Code, I am enclosing my written communication to Chief Tim Scott. Further, this will serve as my written communication to you pursuant to Section 552.3215(g). Please note, that after receiving your complaint and prior to 31 days running, the Texas Supreme Court issued its Twenty-First Emergency Order regarding the Covid-19 State of Disaster on July 31, 2020. On that date the Supreme Court tolled any deadlines for filing or service in civil matters until September 15, 2020. Therefore, this written response is timely under the law.

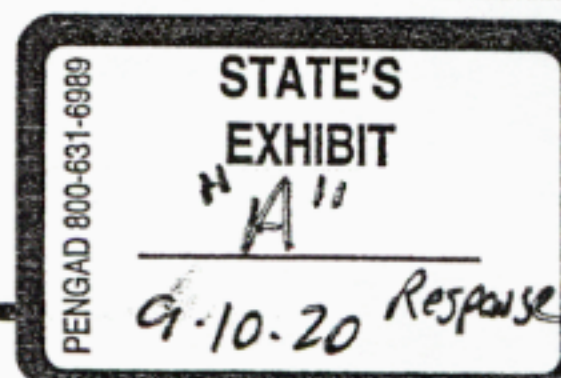
If I have not received evidence of compliance by Chief Scott within four days, I will file for Declaratory Judgment or Injunctive relief pursuant to Section 552.3215.

Respectfully,

Billy W. Byrd
BWB/mt

cc: Enclosures

Jon Warren



From: Jon Warren <jon.warren@countyofupshur.com>
Sent: Wednesday, July 29, 2020 2:34 PM
To: 'lnb@flowersdavis.com'
Subject: Open records complaint

Our office has received two complaints concerning TPIA violations against Big Sandy PD. Jack Winters, P.O. Box 9418, Tyler Texas, filed the complaint by mail and it contains documents including Attorney General Reference ID# 810941. I spoke with chief Tim Scott and he advised the matter had been sent to you. The DA requested that I contact you to determine the status of the information request. One complaint is in reference to Policy and Procedures Manual and the other involves Tim Scott "employee file".

Thanks

Jon Warren
Investigator
Upshur County
Criminal District Attorney's Office



BILLY W. BYRD
CRIMINAL DISTRICT ATTORNEY
UPSHUR COUNTY

405 N. Titus Street, Gilmer, TX 75644
903-843-5513 • FAX 903-843-3661

September 10, 2020

Chief Tim Scott
Big Sandy Police Department
P.O. Box 986
Big Sandy, Texas 75755

Sent via facsimile (903) 636-5033

Dear Chief Scott:

I write to inform you that a gentleman named Jack Winters has filed a formal complaint against you, for violating the Texas Public Information Act, pursuant to Section 552.3215 of that Act.

I have reviewed the complaint. If what is stated by Mr. Winters is correct, he has paid for records back in February and has not received those records. This would be a violation of the Texas Public Information Act without any exceptions claimed.

Therefore, pursuant to Texas Government Code 552.3215(j), I am providing you written notice of my determination. Pursuant to this section you will have four days of receiving my letter to cure the violation and provide the records to Mr. Winters. If you have provided the records, please provide proof of this to me prior to four days expiring. If you have provided the records or if you cure the violation within the next four days after receiving this letter and provide that proof, then no formal action will be taken pursuant to section 552.3215 noted above and the basis of the complaint filed with me.

Respectfully,

Billy W. Byrd
BWB/mt



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

Criminal Prosecutions Division
OFFICE: (512) 463-3038
FAX: (512) 370-9942

October 21, 2020

Jack Winters
PO Box 9418
Tyler, TX 75711
Via email: jwinters0@protonmail.com

**Re: PIA section 552.3215 complaint against the City of Big Sandy and Upshur
County District Attorney's Office**

Mr. Winters:

The undersigned, a representative of the Texas Office of the Attorney General ("OAG"), received from you on September 16, 2020, a complaint under § 552.3215 of the government code alleging that the City of Big Sandy ("Big Sandy"), and possibly the Upshur County District Attorney's Office, violated the Public Information Act. When our office receives a valid complaint under § 552.3215 of the PIA, our office must determine whether the alleged violation(s) were committed, determine whether action will be brought under the PIA, and notify the complainant in writing of our determinations. In addition, should the Attorney General elect to not bring an action pursuant to § 552.3215 of the PIA we are required to provide a statement giving you the basis for such a determination.

FACTS:

- 02/10/20 You submit a Public Information Act request to Big Sandy requesting "any and all documents, files, photographs in the Civil Service Files excluding any confidential information that is deemed protected by law, statute or Texas Attorney General ruling for the following officer(s): Chief of Police."
- 02/17/20 Big Sandy, through counsel, responds via letter, stating "The City of Big Sandy is not a "Civil Service" municipality and has no "Civil Service Files. Consequently, there are no records responsive to your request." Big Sandy requests clarification under government code § 552.222.
- 02/20/20 You clarify and replace your request by stating the following: "Please provide any and all documents, files, photographs in Chief Tim Scott's Personnel File. This may also be known as his Employee File. The department may exclude any confidential information deemed protected by law, statute or Attorney General ruling."

02/21/20 Big Sandy, through counsel, sends you an email stating that he "appreciate[s] you narrowing the scope," but then references materials unrelated to your request. The email does not mention explicitly your request for a personnel or employee file.

You do not receive any further communication regarding your request.

06/03/20 You send a letter to Big Sandy's counsel stating "I am still waiting on the responsive documents from my request...To date I have not received any correspondence from you or the City indicating if the documents will be provided. Could you [sic] provide me with an update on my request."

07/27/20 You file a complaint under the Public Information Act with the Upshur County District Attorney's Office, alleging that Big Sandy never released records responsive to your request. You also make allegations regarding a separate PIA request that is not the subject of this letter.

07/29/20 The Upshur County DA's Office notifies Big Sandy that two complaints are pending and mentions that you are seeking the employee file of Chief Tim Scott.

08/06/20 Through counsel, Big Sandy sends you a letter that pertains to another PIA request and documents responsive to that request.

Later in August, you receive records responsive to the other PIA request about which you alleged violations in your 07/27/20 letter.

09/11/20 The Upshur County DA's Office notifies you via letter that Big Sandy has released records responsive to you, and that therefore there is no violation of the Public Information Act. The DA's Office does not specifically mention the employee file in their letter.

09/16/20 The undersigned receives a Public Information Act complaint from you in which you restate the allegations regarding the "employee file" on July 27, 2020. You also state that the Upshur County DA's Office did not respond to your complaint.

10/19/20 In response to a request from the undersigned, both Big Sandy and the Upshur County DA's Office send the undersigned supplemental documentation. Big Sandy, through counsel, represents to the undersigned that there is no documentation responsive to your request.

10/20/20 In response to a request from the undersigned, you send the undersigned supplemental documentation.

10/21/20 The Upshur County DA's Office responds to your complaint, stating that they have found no violation under the Public Information Act.

Relevant Sections:

§ 552.3215. Declaratory Judgment or Injunctive Relief

(e) A complainant may file a complaint alleging a violation of this chapter. The complaint must be filed with the district or county attorney of the county in which the governmental body is located unless the governmental body is the district or county attorney. If the governmental body extends into more than one county, the complaint must be filed with the district or county attorney of the county in which the administrative offices of the governmental body are located. If the governmental body is a state agency, the complaint may be filed with the Travis County district attorney. If the governmental body is the district or county attorney, the complaint must be filed with the attorney general. To be valid, a complaint must:

- (1) be in writing and signed by the complainant;
- (2) state the name of the governmental body that allegedly committed the violation, as as can be done by the complainant;
- (3) state the time and place of the alleged commission of the violation, as definitely as can be done by the complainant; and
- (4) in general terms, describe the violation. (g) Before the 31st day after the date a complaint is filed under Subsection (e), the district or county attorney shall:

(1) determine whether:

- (A) the violation alleged in the complaint was committed; and
- (B) an action will be brought against the governmental body under this section; and

(2) notify the complainant in writing of those determinations.

(h) Notwithstanding Subsection (g)(1), if the district or county attorney believes that that official has a conflict of interest that would preclude that official from bringing an action under this section against the governmental body complained of, before the 31st day after the date the complaint was filed the county or district attorney shall inform the complainant of that official's belief and of the complainant's right to file the complaint with the attorney general. If the district or county attorney determines not to bring an action under this section, the district or county attorney shall:

- (1) include a statement of the basis for that determination; and
- (2) return the complaint to the complainant.

Analysis

Your clarified request asked for a "employee file" or "personnel file" on the Chief of Police. Counsel for the City of Big Sandy has represented to the undersigned that no such file exists given the chain of command in the Big Sandy Police Department. The undersigned is aware of no evidence suggesting that such a file exists, and so the OAG declines to conclude that the city of Big Sandy has violated the Public Information Act.

Counsel for Big Sandy has also represented to the undersigned that their letter to you on February 21 meant to include reference to the employee file, and that they made a mistake in not referencing that specific request of yours. Counsel also explained that they should have caught the mistake and referenced your specific request when responding to another request on August 6. The undersigned is unaware of any PIA statute that mandates that a governmental entity must respond to a requestor informing them that there are no documents responsive to a request, and so counsel's mistake is not a violation. For future requests for which they have no responsive documentation, the best practice for the City of Big Sandy is to inform requestor that they have no responsive documentation.

The Upshur County District Attorney's Office responded to a separate complaint of yours on September 11. On September 10, the District Attorney's Office wrote a letter to Big Sandy that included an attachment of a July 29 email inquiring into the existence of an "employee file." However, the September 11 letter does not appear to address your request for that file. Therefore, the OAG concludes that District Attorney's Office violated § 552.3215(h) by not addressing your complaint regarding the "employee file." However, they did respond to your complaint on October 21. Therefore, they have cured any violation under the PIA, and the OAG will take no further action under § 552.3215.

Sincerely,

/s/ *Charles Falck*

Charles Falck

Assistant Attorney General

Criminal Prosecutions

White Collar Section

Office of the Attorney General

P.O. Box 12548

Austin, TX 78711-2548

(512) 463-8376 (office)

(512) 463-9912 (fax)

charles.falck@oag.texas.gov

CC: Billy Byrd

billy.byrd@countyofupshur.com

Robert Davis

rsd@flowersdavis.com

Billy Byrd

From: Billy Byrd <billy.byrd@countyofupshur.com>
Sent: Wednesday, October 21, 2020 1:26 PM
To: Jwinters0@protonmail.com
Subject: Amended determination letter from the Upshur County District Attorney

Mr. Winters,

In addition to my letter dated September 11, 2020 to you for my Texas Government Code Section 552.3215 letter, I now add this language:

While all responsive documents were sent to you by the City of Big Sandy within four days of my letter dated September 10, 2020, one additional item from your request to them in February of this year was not originally addressed in my letter. You requested an "Employee File" of Chief Tim Scott in your request to the city. I called the City and learned no such file existed and therefore, I was not in a position to seek any injunctive relief or declaratory judgment per the basis of your complaint. With no responsive records, I did not address this in my letter. If you feel that such records due exist, you could seek relief in some other manner in District Court. Those matters would fall outside Section 552.3215 of the Texas Government Code.

Respectfully,



Billy W. Byrd
Criminal District Attorney
Upshur County
District Attorney's Office
405 North Titus
Gilmer, Texas 75644
(903)-843-5513
(903)-843-3661 – Fax

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