

**COPY**

CAUSE NO. D-1-JV-05-5367

GREG ABBOTT, ATTORNEY GENERAL  
OF TEXAS,  
Petitioner,

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IN THE DISTRICT COURT OF

V.  
UPSHUR COUNTY, TEXAS and  
SHERIFF'S OFFICE OF UPSHUR  
COUNTY,  
Respondents.

TRAVIS COUNTY, TEXAS

\_\_ JUDICIAL DISTRICT

**FILED**  
05 DEC 30 PM 1:51  
*Amelia Rodriguez-Santoyo*  
DISTRICT CLERK  
TRAVIS COUNTY, TEXAS

**ORIGINAL PETITION FOR WRIT OF MANDAMUS**

TO THE HONORABLE JUDGE OF SAID COURT:

Now Comes Petitioner Greg Abbott, Attorney General of Texas, and files his Original Petition for Writ of Mandamus against Upshur County, Texas and the Sheriff's Office of Upshur County.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to mandamus the Respondents pursuant to the Public Information Act (PIA), Tex. Gov't Code § 552.321 (West 2004).
2. Venue is Travis County, Texas. Tex. Gov't Code § 552.321(b) (West 2004).

**PARTIES AND SERVICE**

3. Petitioner is Greg Abbott, Attorney General of Texas.
4. Respondents are Upshur County, Texas and the Upshur County Sheriff's Office.

Respondents may be served by and through the Honorable Jerald (Dean) Fowler III, County Judge, Upshur County, 3<sup>rd</sup> Floor, Courthouse, 100 Tyler St., P.O. Box 790, Gilmer, Texas 75644-0790, Telephone: 903-843-4003, FAX 903-843-0827. Tex. Civ. Prac. & Rem. Code § 17.024(a).

## FACTS

5. The Sheriff is the public information officer for the Sheriff's Office. Tex. Gov't Code § 552.201(b) (West 2004). The Sheriff's Office is part of Upshur County, Texas. The Sheriff is responsible on behalf of the Sheriff's Office for the release of public information as required by the PIA. Tex. Gov't Code § 552.204 (West 2004).

6. On or about July 20, 2005, Keith A. Cornwell, a citizen of Texas, requested public information from the Upshur County Sheriff's Office, specifically "the entire Upshur County Sheriff's Office investigative file" concerning the shooting of a named individual by a Gladewater police office.

7. By letter dated, July 26, 2005, the Sheriff's Office, through the Criminal District Attorney's Office of Upshur County, made a request for an open records decision to the Attorney General. In the request for a decision, the Sheriff's Office raised the law enforcement exception, Tex. Gov't Code § 552.108(a)(1), as grounds for withholding the information requested by Mr. Cornwell.

8. The Sheriff's Office did not provide the requested information or a representative sample of it to the Office of the Attorney General (OAG), as required by Tex. Gov't Code §§ 552.301(e)(1)(D), 552.303(a) (West 2004).

9. On October 4, 2005, the Attorney General ruled that the information requested by Mr. Cornwell had to be disclosed, because the Sheriff failed to submit the information being requested to the OAG, and the information was presumed open. Letter Ruling OR2005-09003; *see* Tex. Gov't Code § 552.302 (West 2004).

10. Upshur County and the Sheriff did not file suit within 30 days of the Attorney General ruling seeking relief from compliance with the ruling. Tex. Gov't Code § 552.324(b) (West 2004).

Accordingly, Upshur County and the Sheriff were required to comply with the decision of the Attorney General and disclose the requested information promptly to the requestor. *Id*; *Thomas v. Cornyn*, 71 S.W.3d 473, 482 (Tex.App.–Austin 2002, no pet.).

11. On November 4, 2005, Mr. Cornwell sent a written complaint to the Attorney General that the Sheriff had not disclosed the requested information as required by the Attorney General ‘s ruling.

12. In response to inquiries from the OAG after the ruling was issued, Timothy Cariker, Assistant District Attorney, took the position that Upshur County did not have a duty to release the requested information. The County’s position as stated by Mr. Cariker was that there was no need to request a ruling in the first instance and that the OAG had previously deemed similar requested information not subject to disclosure. In subsequent conversations, Mr. Cariker informed the OAG that Upshur County would not release the requested information.

13. Even after the Attorney General ruled that the Sheriff’s Office had to provide the requested information to Mr. Cornwell, the Sheriff refused to do so. Even though the legislature provided Upshur County and the Sheriff the right to seek judicial relief from compliance with an Attorney General’s ruling, they did not. There are no facts or law that would allow Upshur County to ignore the clear mandates in the PIA and to determine unilaterally that the Sheriff does not have to provide the requested information to the requestor.

14. According to Mr. Cornwell, the Sheriff still refuses to disclose the requested information to him.

#### **CAUSE OF ACTION**

15. The Attorney General seeks a writ of mandamus compelling Upshur County and the Sheriff Office to provide public information. The Attorney General is entitled to mandamus because

(1) Upshur County did not ask for an Attorney General's ruling in conformance with the requirement of Subchapter G of the PIA; (2) the Attorney General ruled the requested information is public information and not excepted from disclosure under Subchapter C of the PIA; (3) the requested information is subject to public disclosure under the PIA, as a matter of law; and (4) Upshur County and the Upshur County Sheriff's Office refuses to provide the requested information to the requestor. Tex. Gov't Code § 552.321(a) (West 2004); *Thomas*, 71 S.W.3d at 481-82.

16. "The custodian is not authorized to withhold information merely because he considers it to be exempt from disclosure." *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex.App.–Houston [1st Dist.] 1984, no writ). "The [PIA] requires that when a governmental body receives a written request for information which it considered within one of the exceptions to disclosure, and there has been no prior determination that it is exempt, the governmental body must request a decision from the attorney general within ten days. Only the attorney general, and not the governmental body or its officers, may initially determine whether the requested information is a public record or subject to an exception to disclosure." *McNamara v. Fulks*, 855 S.W.2d 782, 783, n. 3 (Tex.App.–El Paso, 1993, no writ).

### **RELIEF REQUESTED**

17. The Attorney General seeks a writ of mandamus to compel Upshur County and the Upshur County Sheriff's Office to provide to Mr. Cornwell for his inspection, or copies, if requested, all records that contain information responsive to Mr. Cornwell's request for information, dated July 20, 2005.

18. The Attorney General has required the services of an attorney in prosecuting this lawsuit. He is being represented by the undersigned Assistant Attorneys General in this matter. If he prevails in this lawsuit, he requests reasonable attorney fees and litigation costs pursuant to Tex.

Gov't Code § 552.323(a) (West 2004). Respondents Upshur County and Upshur County Sheriff's Office are flagrantly ignoring the PIA. Respondents Upshur County and Upshur County Sheriff's Office are not acting on reasonable reliance on any court order or judgment, a published opinion of an appellate court, or a written decision of the Attorney General. *Id.* Accordingly, attorney fees and costs are mandatory if the Attorney General prevails on his claim for writ of mandamus. *Id.*

### **PRAYER**

WHEREFORE PREMISES CONSIDERED, Petitioner Greg Abbott, Attorney General of Texas, respectfully asks that Respondents Upshur County, Texas and Upshur County Sheriff's Office be summoned to appear and show cause why a writ of mandamus should not be issued compelling Respondents to provide immediately to Mr. Cornwell for his inspection, or copies, if requested, all records that contain information responsive to Mr. Cornwell's request for information, dated July 20, 2005. The Attorney General asks also that all costs of litigation and attorney fees be adjudged against Respondents Upshur County, Texas and Upshur County Sheriff's Office.

Petitioner further prays for such other and further relief, both general and special, at law and in equity, to which he may be justly entitled.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

BARRY R. McBEE  
First Assistant Attorney General

EDWARD D. BURBACH  
Deputy Attorney General for Litigation

BARBARA B. DEANE  
Chief, Administrative Law Division

  
BRENDA LOUDERMILK

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Administrative Law Division  
P.O. Box 12548  
Austin, Texas 78711-2548  
Telephone: (512) 475-4292  
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State Bar No. 12585600  
ATTORNEYS FOR PETITIONER

VERIFICATION

THE STATE OF TEXAS           §

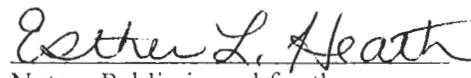
COUNTY OF TRAVIS           §

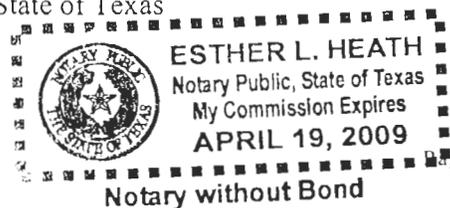
BEFORE ME, the undersigned Notary Public, on this day personally appeared THORNTON WOOD, known to me to be the person whose name is subscribed below on this verification, and being by me duly sworn on his oath states:

1.     that he is an Assistant Attorney General, responsible for investigating complaints of noncompliance with the Public Information Act by governmental bodies, in the Open Records Division of the Office of the Attorney General of Texas (OAG);
2.     that he is over 21 years of age, has never been convicted of a felony and is otherwise fully competent to make this statement;
3.     that he is duly authorized to make this verification;
4.     that the facts asserted in the foregoing Petition for Writ of Mandamus, with regard to Keith A. Cornwell's complaint against the Upshur County Sheriff, are based on his personal knowledge and that his personal knowledge is derived from personal participation, involvement and his witnessing the facts described in the Petition and/or from a review of records kept in the ordinary course of business and in connection with the official business of the OAG. The facts in the Petition are true and correct.

  
\_\_\_\_\_  
THORNTON WOOD

SUBSCRIBED AND SWORN to before me, by THORNTON WOOD, on this the 27th day of DECEMBER, 2005.

  
\_\_\_\_\_  
Notary Public in and for the  
State of Texas



VERIFICATION

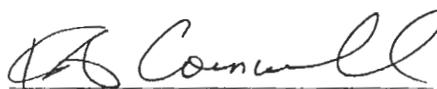
THE STATE OF TEXAS           §

COUNTY OF DALLAS           §

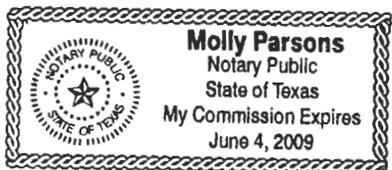
BEFORE ME, the undersigned Notary Public, on this day personally appeared KEITH A. CORNWELL, known to me to be the person whose name is subscribed below on this verification, and being by me duly sworn on his oath states:

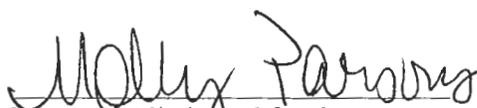
1.       that he is over 21 years of age, has never been convicted of a felony and is otherwise fully competent to make this statement; and

2.       that the facts asserted in the foregoing Petition for Writ of Mandamus accurately recount his communications and contact with the Upshur County Sheriff's Office regarding the referenced open records request made by him and that his personal knowledge is derived from personal participation, involvement and witnessing the facts described in the Petition. The facts in the Petition are true and correct.

  
\_\_\_\_\_  
KEITH A. CORNWELL

SUBSCRIBED AND SWORN to before me, by KEITH A. CORNWELL, on this the 27<sup>th</sup> day of December, 2005



  
\_\_\_\_\_  
Notary Public in and for the  
State of Texas