

AlaFile E-Notice

63-CV-2020-901061.00

To: ALEXANDRA MARIE JORDAN alexandra.jordan@splcenter.org

## NOTICE OF ELECTRONIC FILING

## IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

SOUTHERN POVERTY LAW CENTER V. RON ABERNATHY 63-CV-2020-901061.00

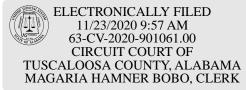
The following complaint was FILED on 11/23/2020 10:10:36 AM

Notice Date: 11/23/2020 10:10:36 AM

MAGARIA HAMNER BOBO CIRCUIT COURT CLERK TUSCALOOSA COUNTY, ALABAMA 714 GREENSBORO AVENUE TUSCALOOSA, AL, 35401

> 205-349-3870 magaria.bobo@alacourt.gov

Unified Judicial System Form ARCiv-93 Rev. 9/18  CIRCUIT COUNT (Not For Dote)  CIRCUIT COUNT (Not For Dote)  IN THE CIRCUIT COUNT (Not For Dote)  First Plaintiff: Business Individual Government Other	OVER SHEET       Ca:       CIRCUIT COURT OF         COURT - CIVIL CASE       TUSCALOOSA COUNTY, ALABA         Demestic Relations Cases)       Date of Filing:       Judge Code:         11/23/2020       Judge Code:       11/23/2020         NERAL INFORMATION         RT OF TUSCALOOSA COUNTY, ALABAMA         RTY LAW CENTER v. RON ABERNATHY       First Defendant:       Business       ✓ Individual         Government       Other         , by checking box (check only one) that best characterizes your action:       Other         OTHER CIVIL FILINGS (cont'd)         MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/
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IN THE CIRCUIT COU SOUTHERN POVE First Plaintiff: ♥Business Individual Government Other NATURE OF SUIT: Select primary cause of action	RT OF TUSCALOOSA COUNTY, ALABAMA         RTY LAW CENTER v. RON ABERNATHY         First Defendant:       Business         Government       Individual         Government       Other         , by checking box (check only one) that best characterizes your action:         OTHER CIVIL FILINGS (cont'd)         MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/
SOUTHERN POVE	RTY LAW CENTER v. RON ABERNATHY         First Defendant:       Business       ✓ Individual         Government       Other         , by checking box (check only one) that best characterizes your action:         OTHER CIVIL FILINGS (cont'd)         MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/
Government Other  NATURE OF SUIT: Select primary cause of action	Government Other , by checking box (check only one) that best characterizes your action: OTHER CIVIL FILINGS (cont'd) MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/
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	MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/
<ul> <li>WDEA - Wrongful Death</li> <li>TONG - Negligence: General</li> </ul>	Enforcement of Agency Subpoena/Petition to Preserve
TOMV - Negligence: Motor Vehicle	CVRT - Civil Rights
	COND - Condemnation/Eminent Domain/Right-of-Way
TOPL - Product Liability/AEMLD	CTMP - Contempt of Court
TOMM - Malpractice-Medical TOLM - Malpractice-Legal	CONT - Contract/Ejectment/Writ of Seizure TOCN - Conversion
TOOM - Malpractice-Degai	<ul> <li>EQND - Equity Non-Damages Actions/Declaratory Judgment/</li> </ul>
TBFM - Fraud/Bad Faith/Misrepresentation	Injunction Election Contest/Quiet Title/Sale For Division
TOXX - Other:	CVUD - Eviction Appeal/Unlawful Detainer
	FORJ - Foreign Judgment
ORTS: PERSONAL INJURY	FORF - Fruits of Crime Forfeiture
TOPE - Personal Property	MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition
TORE - Real Properly	PFAB - Protection From Abuse
OTHER CIVIL FILINGS	EPFA - Elder Protection From Abuse
ABAN - Abandoned Automobile	FELA - Railroad/Seaman (FELA)
ACCT - Account & Nonmortgage	RPRO - Real Property
APAA - Administrative Agency Appeal	WTEG - Will/Trust/Estate/Guardianship/Conservatorship
ADPA - Administrative Procedure Act	COMP - Workers' Compensation
ANPS - Adults in Need of Protective Services	CVXX - Miscellaneous Circuit Civil Case
DRIGIN: F 🔽 INITIAL FILING	A APPEAL FROM O OTHER DISTRICT COURT
	T  TRANSFERRED FROM OTHER CIRCUIT COURT
HAS JURY TRIAL BEEN DEMANDED?	NO Note: Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P, for procedure)
RELIEF REQUESTED:	AWARD REQUESTED VION MONETARY AWARD REQUESTED
ATTORNEY CODE:	
JOR053 11/23 Date	3/2020 9:57:10 AM       /s/ ALEXANDRA MARIE JORDAN         Signature of Attorney/Party filing this form
Election to Proceed under the Alabama Rules for	Expedited Civil Actions: YES NO



## IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

## SOUTHERN POVERTY LAW CENTER,

Plaintiff,

v.

Civil Action No. CV-\_\_\_\_\_

**RON ABERNATHY**, in his official capacity as Custodian of the Records of the Tuscaloosa County Jail,

Defendant.

## **OPEN RECORDS ACT COMPLAINT**

Plaintiff Southern Poverty Law Center ("SPLC") brings this action for equitable relief against Defendant Ron Abernathy, in his official capacity as Sheriff of Tuscaloosa County ("Sheriff") and as the custodian of the records of the Tuscaloosa County Jail ("Jail"), to compel the Sheriff to comply with the Alabama Open Records Act, *see* Ala. Code §§ 36-12-40–41, and disclose the public writings requested by Plaintiff nearly four months ago. Plaintiff states the following in support of its claim:

## I. PRELIMINARY STATEMENT

1. Tuscaloosa County, along with the rest of Alabama, is in the midst of a public health crisis unparalleled in modern times. According to the Alabama Department of Public Health ("ADPH"), more than 228,000 Alabamians have been

infected with COVID-19 since March 2020, with over 12,000 confirmed cases in Tuscaloosa County alone.<sup>1</sup>

2. Since March 2020, thousands of Alabamians have died,<sup>2</sup> and cases in Alabama continue to rise: experts predict that nearly two hundred more Alabamians will die *each week* as we move into winter.<sup>3</sup> Those who survive the disease are vulnerable to a lengthy—and ever-expanding—list of long-term complications.<sup>4</sup>

3. As Governor Kay Ivey noted early in March 2020, "the conditions of jails inherently heighten the possibility of COVID-19 transmission."<sup>5</sup> Close quarters in crowded jails where people housed in dorms or pods are unable to properly socially distance from each other, in which staff come in and go home to their

<sup>&</sup>lt;sup>1</sup> See Ala. Dep't of Pub. Health, *COVID-19 in Alabama*, Ala. Dep't of Pub. Health, Division of Infectious Diseases & Outbreaks, https://dph1.adph.state.al.us/covid-19/ (last updated Nov. 20, 2020, 4:16 PM).

 $<sup>^{2}</sup>$  Id.

<sup>&</sup>lt;sup>3</sup> See, e.g., Ctrs. for Disease Control & Prevention, *CDC COVID Data Tracker: United States Forecasting*, https://covid.cdc.gov/covid-data-tracker/#forecasting\_weeklydeaths (last visited Nov. 20, 2020); Ctrs. for Disease Control & Prevention, *Update: 2020-11-09* 1 (2020), https://www.cdc.gov/coronavirus/2019-ncov/covid-data/pdf/Consolidated-Forecasts-Incident-Cumulative-Deaths-2020-11-09.pdf.

<sup>&</sup>lt;sup>4</sup> See, e.g., Lawrence Specker, Research into mysterious 'Long COVID' symptoms picking up steam, AL.com (Nov. 15, 2020), https://www.al.com/news/2020/11/research-into-mysterious-long-covid-symptoms-picking-up-steam.html; Byron Khalil, Alabamians experiencing long-term side effects of COVID-19, ABC3340 News (Sept. 10, 2020), https://abc3340.com/news/local/alabamians-experiencing-long-term-side-effects-of-covid-19.

<sup>&</sup>lt;sup>5</sup> Office of Alabama Governor Kay Ivey, *Fourth Supplemental State of Emergency: Coronavirus (COVID-19)* (March 26, 2020), https://governor.alabama.gov/newsroom/2020/03/fourth-supplemental-state-of-emergency-coronavirus-covid-19/.

families each day, and where new arrestees cycle in and out daily, create a perfect storm for COVID-19 to spread.<sup>6</sup>

4. "[T]he rate of coronavirus cases in federal and state prisons is more than four times the national rate."<sup>7</sup>

5. The Alabama Department of Corrections ("ADOC") publicly reports how many people working or incarcerated in its facilities are tested, infected, and deceased.<sup>8</sup> ADOC has recorded nearly 1,400 COVID-19 cases<sup>9</sup> across 34 detention facilities in Alabama, resulting in at least 34 deaths.<sup>10</sup> The mortality rate in Alabama prisons is 2.8 times higher than that of the general Alabama population.<sup>11</sup>

<sup>&</sup>lt;sup>6</sup> See, e.g., Megan Wallace, et al., Ctrs. for Disease Control & Prevention, COVID-19 in Correctional and Detention Facilities—United States, February-April 2020 (May 15, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e1.htm; Liesl M. Hagan, et al., Ctrs. for Disease Control & Prevention, Mass Testing for SARS-CoV-2 in 16 Prisons and Jails-Six April–May Jurisdictions. United States, 2020 (Aug. 21. 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6933a3.htm; Cid Standifer & Frances Stead Sellers, Prisons and jails have become a 'public health threat' during the pandemic, advocates The Washington Post (Nov. 11. 2020), sav. https://www.washingtonpost.com/national/coronavirus-outbreaks-prisons/2020/11/11/b8c3a90cd8d6-11ea-930e-d88518c57dcc\_story.html.

<sup>&</sup>lt;sup>7</sup> Standifer & Sellers, *supra*, at note 6.

<sup>&</sup>lt;sup>8</sup> Ala. Dep't of Corr., Office of Pub. Affairs, *ADOC COVID-19 Preparedness Update*, http://www.doc.alabama.gov/covid19news (last updated Nov. 16, 2020).

<sup>&</sup>lt;sup>9</sup> Id.

<sup>&</sup>lt;sup>10</sup> Ctrs. for Disease Control & Prevention, *CDC COVID Data Tracker: Confirmed COVID-19 Cases and Deaths in US Correctional and Detention Facilities by State*, https://covid.cdc.gov/covid-data-tracker/#correctional-facilities (last visited Nov. 20, 2020).

<sup>&</sup>lt;sup>11</sup> As of November 17, 2020, the overall death rate in Alabama was 1.49%, according to ADPH statistics, *see supra* note 1; the death rate for persons incarcerated in Alabama prisons was 4.2%, according to ADOC, *see supra* note 8.

Defendant reported in a news briefing on May 22, 2020, that a COVID 19 outbreak had occurred in the Jail infecting at least 21 prisoners and one staff
 member.<sup>12</sup>

7. Several other Alabama jails have reported COVID-19 outbreaks.<sup>13</sup>

8. Public education about potential superspreading sites such as the Jail is an essential means of stopping community spread of COVID-19.

9. As a public interest organization founded in Alabama and committed to fighting for low-income and vulnerable Alabamians for nearly 50 years, SPLC is committed to ensuring the public health and safety of our communities in Alabama.

10. In furtherance of SPLC's mission, SPLC sent Defendant a request seeking information critical to the health and safety of Tuscaloosa residents and Alabamians, including updates to the information on COVID-19 cases in the Jail that Defendant had already reported to the public in May 2020.

<sup>&</sup>lt;sup>12</sup> See Kevin Reynolds, *Tuscaloosa County Sheriff talks about inmates testing positive for COVID-*19, WBRC (May 22, 2020), https://www.wbrc.com/2020/05/22/tuscaloosa-county-sheriff-talksabout-inmates-testing-positive-covid-/; Sarah Whites-Koditschek, *Tuscaloosa sees surge as coronavirus outbreaks hit nursing home, jail, psych ward*, AL.com (May 30, 2020), https://www.al.com/news/2020/05/tuscaloosa-sees-surge-as-coronavirus-outbreaks-hit-nursinghome-jail-psych-ward.html.

<sup>&</sup>lt;sup>13</sup> See, e.g., John Sharp, Mobile Metro Jail is now COVID-19 free, sheriff says, AL.com (June 24, 2020), https://www.al.com/crime/2020/06/mobile-metro-jail-is-now-covid-19-free-sheriff-says.html; Jeremy Coumbes, COVID Outbreak Confirmed at Morgan County Jail, WLDS News (Nov. 5, 2020), https://wlds.com/covid-outbreak-confirmed-at-morgan-county-jail/.

11. The Sheriff did not respond to the request or numerous follow-up attempts to obtain this information.

12. This lawsuit is a response to Defendant's deliberate withholding of vital public health information and his obligation under the Alabama Open Records Act to respond and produce the requested records.

## **II. JURISDICTION AND VENUE**

13. This is a civil action arising under the laws of the State of Alabama. *See* Ala. Code. § 36-12-40.

14. This Court has jurisdiction pursuant to Ala. Code §§ 12-11-31(1), 12-11-33(1).

15. Venue is proper in this Court because Sheriff Abernathy resides in his official capacity in Tuscaloosa County. *See* Ala. Code § 6-3-2(b)(3).

## **III. PARTIES**

16. Plaintiff SPLC is a domestic non-profit, non-partisan organization incorporated in Montgomery County, Alabama, in 1971.

17. Defendant Ron Abernathy is the Sheriff of Tuscaloosa County, Alabama. In his official capacity as Sheriff, he operates and controls the Tuscaloosa County Jail, located at 1600 26th Avenue, Tuscaloosa, Alabama. Sheriff Abernathy is the custodian of the records that Plaintiff seeks pertaining to the Jail. Sheriff

Abernathy resides in his official capacity in Tuscaloosa County, and all equitable relief sought by Plaintiff will occur in Tuscaloosa County.

## **IV. STATEMENT OF FACTS**

## A. Plaintiff's Records Request

18. Plaintiff sent Defendant a public records request on July 31, 2020, via

electronic mail. A true and correct copy of the email and records request is attached

hereto as Exhibit A (hereinafter "Records Request").

19. Pursuant to Ala. Code § 36-12-40, Plaintiff requested records regarding

the effects of the COVID-19 health crisis on the people working or incarcerated in

the Jail. Plaintiff requested both confirmation of receipt of the request and also the

following records by August 14, 2020:

1. All records concerning the number of persons—either housed in the Tuscaloosa County Jail ("Jail") or employed by the Tuscaloosa County Sheriff's Department ("Sheriff's Department")—who have been tested for COVID-19.

2. All records concerning the number of persons—either housed in the Jail or employed by the Sheriff's Department—who have tested positive for COVID-19.

3. All communications and records concerning housing or cell assignment changes that have been made or are being considered in order to prevent the further spread of COVID-19 in the Jail and other facilities operated by the Sheriff.

20. Plaintiff's Records Request specifically did <u>not</u> request individualized, protected health information, but instead requested aggregate data regarding COVID-19 tests and positive diagnoses.

21. Defendant did not respond to the request by August 14, 2020.

22. Plaintiff sent follow-up emails to Defendant on August 5, 2020<sup>14</sup> (hereinafter "First Follow-Up"); August 20, 2020<sup>15</sup> (hereinafter "Second Follow-Up"); and September 10, 2020<sup>16</sup> (hereinafter "Third Follow-Up").

23. In the Second Follow-Up email, Plaintiff included Robert Spence, attorney for Tuscaloosa County, and noted that Defendant had not confirmed receipt of the request or responded to the request in any manner. *See* Ex. C.

24. On September 11, 2020, in response to Plaintiff's Third Follow-Up email, County Attorney Spence responded:

The Sheriff has retained separate counsel. I have forwarded your email (as well as the previous one) to the Sheriff. He has informed me that they are preparing a response.

A true and correct copy of this email is attached hereto as Exhibit E.

<sup>&</sup>lt;sup>14</sup> A true and correct copy is attached hereto as Exhibit B. This email included a typo: instead of saying "I have *not* received confirmation," the email said "I have received confirmation." As the other exhibits clearly indicate, however, there was no confirmation sent or received.

<sup>&</sup>lt;sup>15</sup> A true and correct copy is attached hereto as Exhibit C.

<sup>&</sup>lt;sup>16</sup> A true and correct copy is attached hereto as Exhibit D.

25. Receiving no response from Defendant or his "separate counsel" following County Attorney Spence's email, Plaintiff sent a final follow-up email to Defendant on September 24, 2020, attached hereto as Exhibit F (hereinafter "Final Follow-Up"). Plaintiff underscored the urgency of the Records Request to Defendant, stating that, upon information and belief, an outbreak of COVID-19 had occurred in the Jail. *See* Ex. F.

26. Defendant has not responded to the Records Request or to the subsequent follow-up emails, in any manner, as of the filing of this Complaint.

27. Plaintiff has made numerous efforts to resolve this issue without litigation.

## **B.** The Public Nature of the Records

28. As Sheriff of Tuscaloosa County, Defendant is the custodian of the Jail and therefore the records sought by Plaintiff. *See* Ala. Code § 14-6-1.

29. The records sought by Plaintiff are those "reasonably necessary to record the business and activities required to be done or carried on" by the Defendant in fulfilling his duties as Sheriff of Tuscaloosa County and under Alabama law, *see Stone v. Consolidated Pub. Co.*, 404 So.2d 678, 681 (Ala. 1981):

a. As Sheriff, Defendant is required to "provide to prisoners at the expense of the county, . . . [n]ecessary medicine and medical attention to those

prisoners who are sick or injured, when they are unable to provide them for themselves." Ala. Code § 14-6-19.

- b. As custodian of the Tuscaloosa Jail, Defendant has a legal obligation to keep the jail "in a clean and sanitary condition . . . and shall exercise every precaution to prevent the spread of disease among the inmates." Ala. Code § 14-6-95.
- c. As the custodian of the Tuscaloosa Jail, Defendant has a legal obligation to monitor the housing assignment of "any person affected with any infectious, contagious or communicable disease" and to immediately clean the place of confinement upon removal of such person. Ala. Code § 14-6-96.

30. Because COVID-19 has been designated as an "Immediate, Urgent Disease/Condition"<sup>17</sup> by ADPH, *all* positive tests for COVID-19—including positive tests for people who work at or are incarcerated in Defendant's Jail—must be reported to the State or County Health Officer within 24 hours, *see* Ala. Admin Code 420-4-1-.04(5).

31. Defendant previously released public information regarding the May 2020 outbreak that is similar to the information sought by Plaintiff in the Records

<sup>&</sup>lt;sup>17</sup> See Ala. Dep't Pub. Health, DETECT Notifiable Diseases, https://www.alabamapublichealth.gov/infectiousdiseases/detect.html (last updated Sept. 10, 2020).

Request.<sup>18</sup> Since the May 2020 outbreak, Defendant has released little information regarding testing numbers or related COVID procedures to the public. Defendant also has not released information about how employees of the Jail are tested and what policies, if any, are in place to prevent spread from staff into the community.<sup>19</sup>

32. Current information about COVID-19 testing, confirmed diagnoses, and housing policies in the Jail is in the public interest as COVID-19 cases rise in Tuscaloosa County<sup>20</sup> and as conditions in the Jail change:

- a. Though the Jail's capacity is 542 people,<sup>21</sup> on information and belief,
  its population was 739 people as of November 19, 2020.
- b. On information and belief, an outbreak of 100 or more persons in the Jail occurred in September 2020. There are no public reports regarding this outbreak or the steps taken to limit the risk to the people working or incarcerated within the jail, or the public at large.

<sup>&</sup>lt;sup>18</sup> See supra note 12. Defendant specifically discussed the number of people who had tested positive and housing policies he implemented at the Jail to address COVID-19.

<sup>&</sup>lt;sup>19</sup> Policies specifically related to staff are important to prevent community spread of COVID-19: in a study of a jail in Illinois, the CDC found that staff had "higher than expected percentage of staff members with COVID-19," which may be attributable to "staff members returning to their household and community after each work shift." Uzay Kirbiyik, et al., Ctrs. for Disease Control & Prevention, *Network Characteristics and Visualization of COVID-19 Outbreak in a Large Detention Facility in the United States — Cook County, Illinois, 2020* (Nov. 6, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6944a3.htm?s\_cid=mm6944a3\_w.

<sup>&</sup>lt;sup>20</sup> See supra note 3.

<sup>&</sup>lt;sup>21</sup> Stephanie Taylor, *County jail population often tops 600 inmates*, TuscaloosaNews.com (May 31, 2008), https://www.tuscaloosanews.com/article/20080531/News/606111316.

c. Information about the presence of an outbreak of COVID-19 amongst those employed at, or incarcerated in, the Jail will allow members of the public, Jail staff, and incarcerated people to better protect themselves.

## V. CLAIM FOR RELIEF

## First Claim: Violation of the Alabama Open Records Act

33. The allegations set forth in the foregoing paragraphs are incorporated herein by reference.

34. The Alabama Open Records Act gives "[e]very citizen . . . a right to inspect and take a copy of any public writing of this state." Ala. Code § 36-12-40.

35. Defendant is the custodian of the records sought by Plaintiff. *See* Ala. Code § 14-6-1.

36. The records sought by Plaintiff, as described in Exhibit A, are public writings within the meaning of Ala. Code § 36-12-40.

37. The records sought by Plaintiff are not exempt from disclosure and Defendant has no legal basis to refuse to disclose the requested records.

Plaintiff has given Defendant sufficient time to respond to the Records
 Request.

39. Defendant has refused to answer the Records Request in any manner and has not raised any exemptions or defenses to production of the requested records.

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40. Disclosure of the records sought by Plaintiff is in the public interest.

41. In failing to produce the records Defendant has violated, and continues to violate, Ala. Code § 36-12-40 and Plaintiff's statutory rights thereunder.

## VI. PRAYER FOR RELIEF

Wherefore, Plaintiff prays that this Honorable Court grant the following relief:

- a. Assume jurisdiction over this action;
- b. A declaration that the requested records are public writings subject to disclosure under the Alabama Open Records Act, Ala. Code § 36-12-40;
- c. A declaration that disclosure of the requested records serves the public interest;
- d. A declaration that Defendant is required to produce the records requested by Plaintiff under Ala. Code § 36-12-40;
- e. A preliminary and permanent injunction ordering Defendant to produce the requested records to Plaintiff without further delay, pursuant to Ala. Code § 36-12-40;
- f. A preliminary and permanent injunction ordering Defendant to waive all fees associated with Plaintiff's request and produce the records by mail or email;

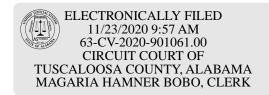
- g. Award Plaintiff its costs and reasonable attorneys' fees; and
- h. Grant Plaintiff such other relief as the Court deems just and proper.

Respectfully submitted this 23rd day of November, 2020.

/s/ Alexandra Jordan

Alexandra Jordan (ASB-4640-X00X) Micah West (ASB-1842-J82F) Ellen Degnan (ASB-3244-I12V) SOUTHERN POVERTY LAW CENTER 400 Washington Avenue Montgomery, Alabama 36104 Tel: (334) 531-4447 alexandra.jordan@splcenter.org micah.west@splcenter.org ellen.degnan@splcenter.org

Attorneys for Plaintiff



## EXHIBIT



From:	Alexandra Jordan
To:	ron@tcsoal.org
Subject:	Public Records Request
Date:	Friday, July 31, 2020 9:49:38 AM
Attachments:	Tuscaloosa Jail COVID Request 7.31.20.pdf

Sheriff Abernathy:

Please see the attached request for public records, made pursuant to Alabama Code § 36-12-40. Please confirm receipt of this request.

Thank you, Alex Jordan



Alexandra Jordan she/her/ella Staff Attorney | Economic Justice Southern Poverty Law Center T 334.956.8257 C 334.531.4447 alexandra.jordan@splcenter.org | www.splcenter.org Admitted in Alabama and California

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Fighting Hate Teaching Tolerance Seeking Justice

Southern Poverty Law Center 400 Washington Avenue Montgomery, AL 36104 334.956.8200 www.splcenter.org

July 31, 2020

## SENT VIA ELECTRONIC MAIL

Sheriff Ron Abernathy Tuscaloosa County Sheriff's Office 714 <sup>1</sup>/<sub>2</sub> Greensboro Avenue Tuscaloosa, AL 35401 <u>ron@tcsoal.org</u>

## **Re: Request for Public Records**

Dear Sheriff Abernathy:

Please consider this letter as a formal request for public records, pursuant to Alabama Code § 36-12-40, on behalf of the Southern Poverty Law Center ("SPLC"). We request disclosure of the following records:

- 1. All records concerning the number of persons—either housed in the Tuscaloosa County Jail ("Jail") or employed by the Tuscaloosa County Sheriff's Department ("Sheriff's Department")—who have been tested for COVID-19.
- 2. All records concerning the number of persons—either housed in the Jail or employed by the Sheriff's Department—who have tested positive for COVID-19.
- 3. All communications and records concerning housing or cell assignment changes that have been made or are being considered in order to prevent the further spread of COVID-19 in the Jail and other facilities operated by the Sheriff.

Alabama law entitles a member of the public to inspect or copy jail records.<sup>1</sup> Section 36-12-40 of the Alabama Code provides that "[e]very citizen has a right to inspect and take a copy of any public writing of this state ....." 36-12-40.

<sup>&</sup>lt;sup>1</sup> For example, "The contents of a jailer's logbook, which records identifying information about a defendant and the charge for which he or she has been placed in the custody of the jail, is public information" under Alabama's Open Records Act. Ala. Op. Att'y Gen. No. 2003-048 (Dec. 17, 2002); *see also* Ala. Op. Att'y Gen. No. 2007-052 (Feb. 26, 2007) ("This Office has . . . stated that arrest information, including the jailer's logbook, is a public record.").

Please provide me with a copy of the requested records on or before **August 14, 2020**, preferably by e-mail (see below). If you refuse to provide any of these documents, in whole or in part, please advise me in writing of your decision, including the legal basis for your refusal.

If you incur costs to produce the records to SPLC, we request a waiver or reduction of fees based on SPLC's status as a non-profit organization. If you are unwilling to waive fees, we need to approve any costs that will exceed \$100. Responsive records or correspondence about this request should be sent to my attention:

Alexandra Jordan <u>alexandra.jordan@splcenter.org</u> Phone: (334) 531-4447

If you cannot send these records electronically, please mail them to me at:

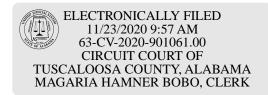
Alexandra Jordan 1731 Winona Avenue Montgomery, AL 36107

If you have any questions or need more information before fulfilling this request, please contact me at the number or email listed above. Thank you for your assistance in this matter.

Sincerely,

Alexandra Jordan

Alexandra Jordan Attorney Southern Poverty Law Center



# EXHIBIT B

From: Alexandra Jordan ron@tcsoal.org To: Subject: **RE: Public Records Request** Wednesday, August 5, 2020 9:52:00 AM Date:

Sheriff Abernathy:

I am writing because I have received confirmation that your office has received my records request.

Thank you, Alex Jordan



Alexandra Jordan she/her/ella Staff Attorney | Economic Justice Southern Poverty Law Center T 334.956.8257 C 334.531.4447 alexandra.jordan@splcenter.org | www.splcenter.org Admitted in Alabama and California

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From: Alexandra Jordan Sent: Friday, July 31, 2020 9:50 AM To: ron@tcsoal.org Subject: Public Records Request

Sheriff Abernathy:

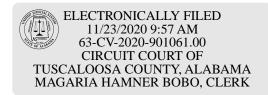
Please see the attached request for public records, made pursuant to Alabama Code § 36-12-40. Please confirm receipt of this request.

Thank you, Alex Jordan

?

Alexandra Jordan she/her/ella Staff Attorney | Economic Justice Southern Poverty Law Center T 334.956.8257 C 334.531.4447 alexandra.jordan@splcenter.org | www.splcenter.org Admitted in Alabama and California

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# EXHIBIT C

From:	Alexandra Jordan
To:	rspence@smithstaggs.com
Cc:	ron@tcsoal.org
Subject:	FW: Public Records Request
Date:	Thursday, August 20, 2020 4:22:00 PM
Attachments:	Tuscaloosa Jail COVID Request 7.31.20.pdf

Dear Mr. Spence,

I am writing to you in your capacity as the Tuscaloosa County attorney. I sent the attached records request to Sheriff Abernathy three weeks ago and have not received a response from the office or acknowledgement of the request. Please advise.

Thank you,

Alex



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From: Alexandra JordanSent: Wednesday, August 5, 2020 9:52 AMTo: ron@tcsoal.orgSubject: RE: Public Records Request

Sheriff Abernathy:

I am writing because I have received confirmation that your office has received my records request.

Thank you, Alex Jordan



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From: Alexandra Jordan Sent: Friday, July 31, 2020 9:50 AM To: ron@tcsoal.org Subject: Public Records Request

Sheriff Abernathy:

Please see the attached request for public records, made pursuant to Alabama Code § 36-12-40. Please confirm

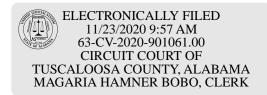
receipt of this request.

Thank you, Alex Jordan



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# EXHIBIT D

From:	Alexandra Jordan
То:	rspence@smithstaggs.com
Cc:	ron@tcsoal.org
Subject:	RE: Public Records Request
Date:	Thursday, September 10, 2020 4:03:00 PM

#### Hello,

I am writing again regarding the public records request I submitted to the Tuscaloosa County Sheriff's Department more than a month ago. A representative of the Sheriff's Department is required, under Alabama law, to respond to this request. If you do not respond to this request in a timely manner, I will take the necessary steps.

#### Alex Jordan



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From: Alexandra Jordan
Sent: Thursday, August 20, 2020 4:23 PM
To: rspence@smithstaggs.com
Cc: ron@tcsoal.org
Subject: FW: Public Records Request

Dear Mr. Spence,

I am writing to you in your capacity as the Tuscaloosa County attorney. I sent the attached records request to Sheriff Abernathy three weeks ago and have not received a response from the office or acknowledgement of the request. Please advise.

Thank you, Alex



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From: Alexandra Jordan
Sent: Wednesday, August 5, 2020 9:52 AM
To: ron@tcsoal.org
Subject: RE: Public Records Request

Sheriff Abernathy:

I am writing because I have received confirmation that your office has received my records request.

Thank you, Alex Jordan



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From: Alexandra Jordan
Sent: Friday, July 31, 2020 9:50 AM
To: ron@tcsoal.org
Subject: Public Records Request

Sheriff Abernathy:

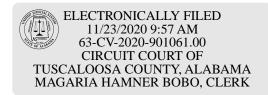
Please see the attached request for public records, made pursuant to Alabama Code § 36-12-40. Please confirm receipt of this request.

Thank you, Alex Jordan



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## EXHIBIT E

From:Robert SpenceTo:Alexandra JordanSubject:Re: Public Records RequestDate:Friday, September 11, 2020 12:07:54 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

## Ms. Jordan:

The Sheriff has retained separate counsel. I have forwarded your email (as well as the previous one) to the Sheriff. He has informed me that they are preparing a response.

## **Robert Spence**

Smith & Staggs, LLP 701 22<sup>nd</sup> Avenue, Suite 1 Tuscaloosa, Alabama 35401 (205) 752-6262 (Main) (205) 752-6288 (Direct) (205) 409-3144 (Fax)

From: Alexandra Jordan <Alexandra.Jordan@splcenter.org>
Date: Thursday, September 10, 2020 at 4:03 PM
To: "rspence@smithstaggs.com" <rspence@smithstaggs.com>
Cc: "ron@tcsoal.org" <ron@tcsoal.org>
Subject: RE: Public Records Request

Hello,

I am writing again regarding the public records request I submitted to the Tuscaloosa County Sheriff's Department more than a month ago. A representative of the Sheriff's Department is required, under Alabama law, to respond to this request. If you do not respond to this request in a timely manner, I will take the necessary steps.

#### Alex Jordan



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From: Alexandra JordanSent: Thursday, August 20, 2020 4:23 PMTo: rspence@smithstaggs.comCc: ron@tcsoal.org

## Subject: FW: Public Records Request

Dear Mr. Spence,

I am writing to you in your capacity as the Tuscaloosa County attorney. I sent the attached records request to Sheriff Abernathy three weeks ago and have not received a response from the office or acknowledgement of the request. Please advise.

Thank you, Alex



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From: Alexandra Jordan Sent: Wednesday, August 5, 2020 9:52 AM To: ron@tcsoal.org Subject: RE: Public Records Request

Sheriff Abernathy:

I am writing because I have received confirmation that your office has received my records request.

Thank you, Alex Jordan



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From: Alexandra Jordan Sent: Friday, July 31, 2020 9:50 AM To: ron@tcsoal.org Subject: Public Records Request

Sheriff Abernathy:

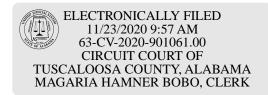
Please see the attached request for public records, made pursuant to Alabama Code § 36-12-40. Please confirm receipt of this request.

Thank you, Alex Jordan



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## EXHIBIT F

From:	Alexandra Jordan
To:	ron@tcsoal.org
Cc:	rspence@smithstaggs.com
Subject:	RE: Public Records Request
Date:	Thursday, September 24, 2020 4:54:00 PM
Attachments:	Tuscaloosa Jail COVID Request 7.31.20.pdf

Sheriff Abernathy:

I have received correspondence from the County attorney that you have retained private counsel in response to this records request. I have not been contacted by your counsel, and your response to my request is nearly two months outstanding. You are required **by law** to respond to this request. See Ala. Code § 36-12-41.

Furthermore, the urgency of my request is paramount: I have learned that numerous people at your jail have recently tested positive for COVID-19.

Please respond to this request no later than October 1, 2020.

Thank you, Alex Jordan



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From: Alexandra Jordan
Sent: Thursday, September 10, 2020 4:03 PM
To: rspence@smithstaggs.com
Cc: ron@tcsoal.org
Subject: RE: Public Records Request

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Alex Jordan



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Sent: Thursday, August 20, 2020 4:23 PM
To: rspence@smithstaggs.com
Cc: ron@tcsoal.org
Subject: FW: Public Records Request

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Thank you,

Alex



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From: Alexandra Jordan
Sent: Wednesday, August 5, 2020 9:52 AM
To: ron@tcsoal.org
Subject: RE: Public Records Request

Sheriff Abernathy:

I am writing because I have received confirmation that your office has received my records request.

Thank you, Alex Jordan



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From: Alexandra Jordan Sent: Friday, July 31, 2020 9:50 AM To: ron@tcsoal.org Subject: Public Records Request

Sheriff Abernathy:

Please see the attached request for public records, made pursuant to Alabama Code § 36-12-40. Please confirm

receipt of this request.

Thank you, Alex Jordan



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