



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

Criminal Prosecutions Division
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October 21, 2020

Jack Winters
PO Box 9418
Tyler, TX 75711
Via email:

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*

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