



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

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

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

TUSCALOOSA COUNTY, ALABAMA
714 GREENSBORO AVENUE
TUSCALOOSA, AL, 35401

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

WDEA - Wrongful Death

ATTORNEY CODE:

JOR053

11/23/2020 9:57:10 AM

/s/ ALEXANDRA MARIE JORDAN

MEDIATION REQUESTED:

YES NO UNDECIDED

**IN THE CIRCUIT COURT OF
 TUSCALOOSA COUNTY, ALABAMA**

**SOUTHERN POVERTY LAW
 CENTER,**

Plaintiff,

v.

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

Defendant.

Civil Action No. CV-_____

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.¹

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

3. As Governor Kay Ivey noted early in March 2020, “the conditions of jails inherently heighten the possibility of COVID-19 transmission.”⁵ 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

¹ 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).

² *Id.*

³ 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>.

⁴ 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>.

⁵ Office of Alabama

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

4.

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.

20. Plaintiff's Records Request specifically did ***not*** 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, 2020¹⁴ (hereinafter "First Follow-Up"); August 20, 2020¹⁵ (hereinafter "Second Follow-Up"); and September 10, 2020¹⁶ (hereinafter "Third Follow-Up").

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

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 . .

Request.¹⁸

- 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.

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

A

From: [Alexandra Jordan](#)
To: ron@tsoal.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

This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify The Southern Poverty Law Center immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.

July 31, 2020

Sheriff Ron Abernathy
Tuscaloosa County Sheriff's Office
714 ½ Greensboro Avenue
Tuscaloosa, AL 35401
ron@tcsaal.org

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.¹ 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.

¹ 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.”).



ELECTRONICALLY FILED
11/23/2020 9:57 AM
63-CV-2020-901061.00
CIRCUIT COURT OF
TUSCALOOSA COUNTY, ALABAMA
MAGARIA HAMNER BOBO, CLERK

From: [Alexandra Jordan](#)
To: ron@tsoal.org
Subject: RE: Public Records Request
Date: Wednesday, August 5, 2020 9:52:00 AM


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 |

 ELECTRONICALLY FILED
11/23/2020 9:57 AM
63-CV-2020-901061.00
CIRCUIT COURT OF
TUSCALOOSA COUNTY, ALABAMA
MAGARIA HAMNER BOBO, CLERK

EXHIBIT

C




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@spicenter.org | www.splcenter.org
Admitted in Alabama and California

This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify The Southern Poverty Law Center immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.

 ELECTRONICALLY FILED
11/23/2020 9:57 AM
63-CV-2020-901061.00
CIRCUIT COURT OF
TUSCALOOSA COUNTY, ALABAMA
MAGARIA HAMNER BOBO, CLERK

EXHIBIT

D

From: [Alexandra Jordan](#)

|



EXHIBIT

E

From: [Robert Spence](#)
To: [Alexandra Jordan](#)
Subject: Re: Public Records Request
Date: 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

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



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

This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify The Southern Poverty Law Center immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.

From: Alexandra Jordan
Sent: Wednesday, August 5, 2020 9:52 AM
To: ron@tcsaal.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



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

This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify The Southern Poverty Law Center immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.

From: Alexandra Jordan
Sent: Friday, July 31, 2020 9:50 AM
To: ron@tcsaal.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

This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify The Southern Poverty Law Center immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.

EXHIBIT

F

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



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
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



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

This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify The Southern Poverty Law Center immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.

From: Alexandra Jordan

Sent: Thursday, August 20, 2020 4:23 PM
To: rspence@smithstaggs.com
Cc: ron@tcsaal.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



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

This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify The Southern Poverty Law Center immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.

From: Alexandra Jordan
Sent: Wednesday, August 5, 2020 9:52 AM
To: ron@tcsaal.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



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

This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify The Southern Poverty Law Center immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.

From: Alexandra Jordan
Sent: Friday, July 31, 2020 9:50 AM
To: ron@tcsaal.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

This e-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of this e-mail or any attachment is prohibited. If you have received this e-mail in error, please notify The Southern Poverty Law Center immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.