

CAUSE NO. DC-16-15678

Freenev Anita

HENLEY & HENLEY, P.C.
Relator,

§ **IN THE DISTRICT COURT**

§

V.

§

§ **JUDICIAL DISTRICT**

§

THE CITY OF DALLAS,
Respondent.

§

§ **OF DALLAS COUNTY, TEXAS**

PETITION FOR WRIT OF MANDAMUS

TO THE HONORABLE JUDGE OF SAID COURT:

Henley & Henley, P.C., Relator, files this petition seeking a writ of mandamus directing City of Dallas, as Respondent, to comply with its obligation under sections 552.021, 552.221 and 552.307 of the Texas Government Code to provide the responsive videos requested pursuant to the Public Information Act request validly and properly served upon Respondent by Relator.

DISCOVERY CONTROL PLAN LEVEL

1. Relator intends that discovery be conducted under Discovery Level 2.

PARTIES AND SERVICE

2. Relator, Henley & Henley, P.C. brings this action. Relator is a resident of Dallas County, Texas.

3. Respondent City of Dallas, a Political Subdivision, may be served with process by -serving its City Secretary, Rosa A. Rios, at Dallas City Hall, 1500 Marilla Street, Room 5DS, Dallas, Texas 75201. Service of said Respondent as described above can be effected by personal delivery.

JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this court.
5. Relator seeks monetary relief of \$100,000 or less and non-monetary relief.

6. This court has jurisdiction over the parties because Respondent is a Texas resident.

7. Venue in Dallas County is proper in this cause under Section 15.002(a)(2) of the Texas Civil Practice and Remedies Code because this county was the county of residence of City of Dallas, Respondent herein, at the time the cause of action accrued.

FACTS

8. On October 21, 2016, Relator sent its first open records request to Respondent relating to the custodial death of Anthony Timpa on August 10, 2016.¹ The first request sought the Offense Report, Accident Photos, Crime Scene Photos, Arrest Report, 911 Call Sheet, 911 Tapes, and the Investigative file. In addition, the request sought “dash cam videos, body cam videos, and witness statements.”

9. On October 24, 2016, Relator sent its second open records request to Respondent relating to the custodial death of Anthony Timpa.² The second request sought “copies of any dash camera or body camera videos relating to detention and arrest of Anthony Timpa (DOB 08-05-1984) on 8-10-2016 between 10:30 pm and 11:30 pm at 1700 Mockingbird Lane, Dallas, Dallas County, Texas.”

10. On October 24, 2016, Respondent acknowledged the Relator’s open records requests, and sent an email stating the following:

“he Open Records Team anticipates the information can be provided within 20 business days from the date of this letter, by 10:00 am..”³

11. Tuesday, November 22, 2016 is 20 business days from October 24, 2016. As of December 8, 2016, Respondent has still not produced any of the documents requested.

12. In addition, Respondent never requested or sought an opinion from the Attorney

¹ Attached as Exhibit 1 is a true and correct copy of the first open record request sent on October 21, 2016.

² Attached as Exhibit 2 is a true and correct copy of the second open record request sent on October 24, 2016.

³ Attached as Exhibit 3 is a true and correct copy of the October 24, 2016 email.

General about whether any of the requested information should be withheld.

WRIT OF MANDAMUS

13. Section 552.321 of the Texas Government Code gives this Court the authority to issue a writ of mandamus in three circumstances permits the to three instances: (1) where a governmental body refuses to request an attorney general's decision on whether information is public; (2) where the governmental body refuses to supply public information; (3) and where a governing body refuses to supply information that the attorney general has determined is public information not excepted from disclosure. *Thomas v. Cornyn*, 71 S.W.3d 473, 481 (Tex. App.—Austin 2002, no pet.).

14. In this case, Respondent failed to request or seek an opinion from the Attorney General as to why the requested videos should be withheld.

15. Relator seeks a writ of mandamus directing the City of Dallas, as Respondent, to comply with its obligation under sections 552.021, 552.221 and 552.307 of the Texas Government Code to provide information responsive to Relator's public information requests validly and properly served upon Respondent by Relator.

ATTORNEY'S FEES

16. Pursuant to the Texas Government Code, request is made for all costs and reasonable and necessary attorney's fees incurred by Relator herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Relator prays that Respondent be cited to appear and answer herein, and that on final trial hereof judgment be granted as requested herein

and Relator be awarded costs and reasonable and necessary attorney's fees, and for such other and further relief that may be awarded at law or in equity.

Respectfully submitted,

HENLEY & HENLEY, P.C.

By: /s/ R. Lane Addison

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Fax. (214) 821-0124

Attorneys for Relator

Henley & Henley, P.C.

EXHIBIT 1

OPEN RECORDS REQUEST FORM

Dallas Police Department
Open Records Unit
1400 South Lamar Street, 1st Floor
Dallas, Texas 75215
Telephone (214) 671-3148
Fax (214) 671-4636

Open Records email address: openrecordunit@dpd.ci.dallas.tx.us
To access the Dallas Police Department website, please visit
www.dallaspolice.net

DPD USE ONLY
DIVISIONS SENT TO:

- _____ 2143
- _____ 2182
- _____ 2115
- _____ 2163
- _____ 2162
- _____ 2127
- _____ 2117
- _____ 2147
- _____ 2147 (Tech Support)
- _____ 2164
- _____ Patrol Station
- _____ Open Records Team
- _____ Other

(PLEASE PRINT)

TODAY'S DATE: _____

MR/MS/MRS: (YOUR NAME) _____
(CIRCLE ONE)

BUS. OR AGENCY: _____
(IF REQUESTING FOR A BUSINESS OR AGENCY)

ADDRESS: _____

CITY, STATE & ZIP: _____

PHONE NO: _____

Under the Public Information Act, I request copies of the following:

- _____ Offense Report _____ Accident Photos _____ Crime Scene Photos _____ Arrest Report
- _____ IAD Files _____ 911 Call Sheet _____ 911 Tapes (Not Kept After 30 Days)
- _____ Investigative file _____ Prosecution Report _____ Certified


SERVICE (REPORT) NUMBER: _____

DATE OF OCCURRENCE: _____

IF REQUESTING AN OFFENSE REPORT, EXPLAIN WHAT TYPE?

Sincerely,

REQUEST RECEIVED BY: _____



(SIGNATURE)

EXHIBIT 2

OPEN RECORDS REQUEST FORM

Dallas Police Department
Open Records Unit
1400 South Lamar Street, 1st Floor
Dallas, Texas 75215
Telephone (214) 671-3148
Fax (214) 671-4636

Open Records email address: openrecordunit@dpd.ci.dallas.tx.us
To access the Dallas Police Department website, please visit
www.dallaspolice.net

DPD USE ONLY
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- 2127
- 2117
- 2147
- 2147 (Tech Support)
- 2164
- Patrol Station
- Open Records Team
- Other

(PLEASE PRINT)

TODAY'S DATE: October 24, 2016

MR/MS/MRS: (YOUR NAME) R. Lane Addison
(CIRCLE ONE)

BUS. OR AGENCY: Henley & Henley, PC
(IF REQUESTING FOR A BUSINESS OR AGENCY)

ADDRESS: 3300 Oak Lawn Ave., Ste. 700

CITY, STATE & ZIP: Dallas, Texas 75219

PHONE NO: (214) 821-0222

Under the Public Information Act, I request copies of the following:

- Offense Report Accident Photos Crime Scene Photos Arrest Report
 IAD Files 911 Call Sheet 911 Tapes (Not Kept After 30 Days)
 Investigative file Prosecution Report Certified

SERVICE (REPORT) NUMBER: _____

DATE OF OCCURRENCE: August 10, 2016

IF REQUESTING AN OFFENSE REPORT, EXPLAIN WHAT TYPE?


Seeking copies of any dash camera or body camera videos relating to detention and arrest

of Anthony Timpa (DOB 08-05-1984) on 8-10-2016 between 10:30 pm and 11:30 pm

at 1700 Mockingbird Lane, Dallas, Dallas County, Texas.

Sincerely,

REQUEST RECEIVED BY: _____



(SIGNATURE)

EXHIBIT 3

From: Johnson, LaTressa
To: [Lane Addison](#)
Subject: Open Record Notification Letter for Request Regarding Anthony Timpa
Date: Monday, October 24, 2016 1:22:47 PM

The Open Records Team has received your request for information pursuant to the Public Information Act.

Factors affecting your request will depend upon the information you are requesting and the divisions, sections or units responsible for retrieving that information. With this in mind, the information you are requesting may not be available within 10 business days. However, the Open Records Team anticipates the information can be provided **within** 20 business days from the date of this letter, by 10:00 am.

The Open Records Team apologizes for this delay in fulfilling your request. If you need any information, please feel free to contact the Open Records Team by calling 214-671-3148.

Sincerely,

Open Records Unit
Office of the Chief of Staff
Dallas Police Department
1400 South Lamar Street
Dallas, TX 75215