



## AlaFile E-Notice

42-CV-2015-900060.00

To: DENNIS R. BAILEY  
drb@rushtonstakely.com

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF LAWRENCE COUNTY, ALABAMA

TENNESSEE VALLEY PRINTING COMPANY, INC. V. GENE MITCHELL  
42-CV-2015-900060.00

The following complaint was FILED on 5/5/2015 1:24:15 PM

Notice Date: 5/5/2015 1:24:15 PM

SANDRA LIGON  
CIRCUIT COURT CLERK  
LAWRENCE COUNTY, ALABAMA  
14451 MARKET STREET, SUITE 300  
MOULTON, AL 35650

256-974-2432  
sandra.ligon@alacourt.gov

**COVER SHEET  
CIRCUIT COURT - CIVIL CASE**

(Not For Domestic Relations Cases)

Case Number:

**42-CV-201**

Date of Filing:

05/05/2015



ELECTRONICALLY FILED  
5/5/2015 1:24 PM  
42-CV-2015-900060.00  
CIRCUIT COURT OF  
LAWRENCE COUNTY, ALABAMA  
SANDRA LIGON, CLERK

**GENERAL INFORMATION**

**IN THE CIRCUIT OF LAWRENCE COUNTY, ALABAMA  
TENNESSEE VALLEY PRINTING COMPANY, INC. v. GENE MITCHELL**

**First Plaintiff:**  Business  Individual  
 Government  Other

**First Defendant:**  Business  Individual  
 Government  Other

**NATURE OF SUIT:**

**TORTS: PERSONAL INJURY**

- WDEA - Wrongful Death
- TONG - Negligence: General
- TOMV - Negligence: Motor Vehicle
- TOWA - Wantonnes
- TOPL - Product Liability/AEMLD
- TOMM - Malpractice-Medical
- TOLM - Malpractice-Legal
- TOOM - Malpractice-Other
- TBFM - Fraud/Bad Faith/Misrepresentation
- TOXX - Other: \_\_\_\_\_

**OTHER CIVIL FILINGS (cont'd)**

- MSXX - Birth/Death Certificate Modification/Bond Forfeiture  
Appeal/Enforcement of Agency Subpoena/Petition to Preserve
- CVRT - Civil Rights
- COND - Condemnation/Eminent Domain/Right-of-Way
- CTMP-Contempt of Court
- CONT-Contract/Ejectment/Writ of Seizure
- TOCN - Conversion
- EQND- Equity Non-Damages Actions/Declaratory  
Judgment/Injunction Election Contest/Quiet Title/Sale For  
Division
- CVUD-Eviction Appeal/Unlawful Detainer
- FORJ-Foreign Judgment
- FORF-Fruits of Crime Forfeiture
- MSHC-Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition
- PFAB-Protection From Abuse
- FELA-Railroad/Seaman (FELA)
- RPRO-Real Property
- WTEG-Will/Trust/Estate/Guardianship/Conservatorship
- COMP-Workers' Compensation
- CVXX-Miscellaneous Circuit Civil Case

**TORTS: PERSONAL INJURY**

- TOPE - Personal Property
- TORE - Real Property

**OTHER CIVIL FILINGS**

- ABAN - Abandoned Automobile
- ACCT - Account & Nonmortgage
- APAA - Administrative Agency Appeal
- ADPA - Administrative Procedure Act
- ANPS - Adults in Need of Protective Services

**ORIGIN:** F  **INITIAL FILING**

A  **APPEAL FROM  
DISTRICT COURT**

O  **OTHER**

R  **REMANDED**

T  **TRANSFERRED FROM  
OTHER CIRCUIT COURT**

**HAS JURY TRIAL BEEN DEMANDED?**  Yes  No

**RELIEF REQUESTED:**  **MONETARY AWARD REQUESTED**  **NO MONETARY AWARD REQUESTED**

**ATTORNEY CODE:** BAI028

5/5/2015 1:24:14 PM

/s/ DENNIS R. BAILEY

**MEDIATION REQUESTED:**  Yes  No  Undecided



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

**TENNESSEE VALLEY  
PRINTING COMPANY, INC.  
D/B/A THE DECATUR DAILY,**

**PLAINTIFF**

**VS.**

**GENE MITCHELL,**

**DEFENDANT**

**CIVIL ACTION No. CV-15-\_\_\_\_\_**

**VERIFIED COMPLAINT**

Comes now the Plaintiff identified above as Tennessee Valley Printing Company, Inc., d/b/a The Decatur Daily (“TVP”), and submits the following claim against Gene Mitchell:

1. Plaintiff Tennessee Valley Printing Company, Inc. is an Alabama corporation and is the publisher of a daily newspaper known as The Decatur Daily which is circulated principally in the State of Alabama and to a lesser extent in other states of the United States.

2. An essential function of TVP is the gathering of information from public records for publication in The Decatur Daily in order that the workings of public institutions not be conducted in secret but rather be subject to public review. The public is entitled to understand and intelligently consider the affairs of such institutions and cannot do so without access to information from public records.

TVP employs and trains reporters to gather such information for publication. TVP has such a public interest in public records as to entitle its reporters to inspect and copy such records.

3. Defendant Mitchell is the Sheriff of Lawrence County, Alabama.

4. Sheriff Mitchell's office has previously permitted reporters of TVP to view the front page of incident/offense reports without exception.

5. More than 45 days ago, on March 19, 2015, Shane Watkins was fatally shot by one or more Lawrence County sheriff's deputies at the residence he shared with his mother in the Langtown community north of Moulton in Lawrence County.

6. On March 31, 2015, Jonece Dunigan, a reporter for The Decatur Daily, made a written request for (1) documents identifying the names of the deputies involved; (2) a copy of the incident/offense report for the shooting; (3) the dash camera or lapel video of the shooting; (4) disciplinary records for the deputies involved, if any; and (5) transcripts and audio of 911 calls made from the scene of the shooting that date. She requested the documents be produced April 3, 2015.

7. On April 1, 2015, the Defendant responded that (1) "we have given the Alabama (sic) Bureau of Investigations all relevant material from the date you requested;" and (2) "I do not believe it appropriate for this office to release information that might interfere with that process/investigation at this time."

8. On April 9, 2015, Ms. Dunigan renewed her request on behalf of TVP. Her requests have all been denied.

9. On April 15, 2015, Ms. Dunigan, on behalf of TVP, requested Deputy Steven Moody's personnel file. He did not comply with the request.

10. Defendant has possession, custody or control of records requested by TVP including, but not limited to, (1) documents identifying the names of the deputies involved; (2) a copy of the incident/offense report of the shooting; and (3) personnel records of the deputies involved.

11. ALABAMA CODE 1975 § 36-12-40 (hereinafter the "Open Records Act") provides that "Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise provided by statute."

12. The name of a public employee (with the exception of confidential informants) is public information and not a "sensitive personnel record." Opinion to Honorable Donald B. Sweeney, Jr., attorney, Hoover City Board of Education, dated April 3, 2015.

13. It is well-settled that the front side of the Incident/Offense Report should be available for public inspection. Opinion to Honorable Tommy Ed Roberts, Alabama State Senator, dated October 7, 1999, A.G. No. 2000-004; see also, opinions to Honorable S. Wayne Fuller, Attorney, City of Cullman, dated August 30, 2000, A.G. No. 2000-225; Honorable D. T. Marshall, Montgomery

County Sheriff, dated August 8, 2000, A.G. No. 2000-203; Honorable Paige M. Carpenter, Attorney, City of Northport, dated July 19, 2000, A.G. No. 2000-197.

14. Disciplinary records of public employees including “all documents on file in the employee’s personnel file, including...disciplinary actions, and memos of reprimand” are specifically subject to public inspection. Opinion to Honorable Constance S. Aune, Mobile County Board of Education, dated October 4, 1995, A.G. No. 1996-003.

15. At least two state supreme court decisions have wrestled with the disclosure of the names of law enforcement personnel involved in shootings and have held that a blanket assertion that release would impair an investigation or pose security threats was not sufficient to overcome the public’s right to know. The Evening News Association v. City of Troy, 417 Mich. 481, 339 N.W.2d 421 (1983) and Long Beach Police Officers Assoc. v. Los Angeles Times Communications, LLC, 59 Cal.4<sup>th</sup> 59, 325 P.3d 460 (2014).

16. None of the requested documents are “investigative reports, records, field notes, witness statements or other investigative writings or recordings” generated as part of a criminal investigation which would be protected under ALA. CODE § 12-31-3.1. All of the requested information was public information created before any investigation was begun by the State Bureau of Investigation and would have been created regardless of whether there would be an investigation by the

State Bureau of Investigation.

17. The fact that public records are collected as part of a criminal investigation does not transform public records into confidential records. The Alabama Supreme Court has stated: “We note, for example, that a record that would ordinarily be subject to disclosure under the Open Records Act does not become private simply because it is given to law-enforcement personnel.” Water Works and Sewer Bd. of City of Talladega v. Consolidated Pub., Inc., 892 So.2d 859, 866 n.4 (Ala. 2004). And the Attorney General has stated, for example, that the front of an I/O report is public record even in light of Section 12-21-3.1(b).

18. Plaintiff engaged counsel to correspond with counsel for Defendant in an attempt resolve the dispute.

19. By letter dated April 13, counsel provided legal authority for Plaintiff’s right to access the materials requested.

20. Defendant’s denial of access to the requested documents is a violation of the Open Records Act.

21. Such denial is causing TVP immediate and irreparable injury for which there is no adequate remedy at law.

WHEREFORE, Plaintiff TVP prays for relief as follows:

(a) That Defendant be preliminarily and permanently enjoined to cease and desist from denying TVP access to the records requested that were created by his department and were at any time in his custody as sheriff.

(b) That TVP have and recover from Defendant reasonable attorneys' fees under the authority of Bell v. Birmingham News Co., 576 So. 2d 669 (Ala. Civ. App. 1991), and Slawson v. Alabama Forestry Comm'n, 631 So. 2d 953, 959 (Ala. 1994); and

(c) That TVP have such other and further relief as may be appropriate.

[Signatures Begin Next Page]



VERIFICATION

PERSONALLY appeared before me, DON HUDSON who, first being duly sworn, says: that he is the Petitioner in the foregoing action; that he has read the foregoing COMPLAINT; that the statements contained therein are true to the best of his knowledge except as to those stated to be based upon information and belief, as to which he believes such matters to be true.



\_\_\_\_\_  
Don Hudson, Executive Editor

STATE OF ALABAMA        )  
                                      :  
COUNTY OF MORGAN     )

I, the undersigned authority, a Notary Public in and for the county and state aforesaid, hereby certify that DON HUDSON, whose name is subscribed to the foregoing instrument, and who is known to me, acknowledged before me on this day that he signed that instrument as his free and voluntary act on the day the same bears date, for the uses and purposes therein set forth.

GIVEN under my hand and seal of office this 5<sup>th</sup> day of May, 2015.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

My Commission Expires 12-10-2019

(SEAL)

/s/Dennis R. Bailey  
Dennis R. Bailey (BAI028)  
J. Evans Bailey (BAI062)  
Attorneys for Plaintiff TVP

RUSHTON STAKELY JOHNSTON & GARRETT PA  
184 Commerce Street  
Post Office Box 270  
Montgomery, Alabama 36101-0270  
(334) 206-3234 (phone)  
(334) 481-0031 (fax)  
[drb@rushtonstakely.com](mailto:drb@rushtonstakely.com) (email)  
[ebailey@rushtonstakely.com](mailto:ebailey@rushtonstakely.com) (email)

Serve Defendant:

Gene Mitchell  
Lawrence County Sheriff  
242 Parker Road  
Moulton, Alabama 35650