

State of Alabama Unified Judicial System Form C-34 Rev. 4/2017	SUMMONS -CIVIL-	Court Case Number <u>CV-17-240</u> JH
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IN THE Circuit COURT OF Montgomery COUNTY, ALABAMA
(Circuit, District, or Juvenile) (Name of County)

Reverend Tabitha Isner v. Jefferson S. Dunn
[Name(s) of Plaintiff(s)] [Name(s) of Defendant(s)]

NOTICE TO: Jefferson S. Dunn
(Name and Address of Defendant)

THE COMPLAINT OR OTHER DOCUMENT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT OR OTHER DOCUMENT, WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF(S) OR ATTORNEY(S) OF THE PLAINTIFF(S), J. Mitchell McGuire, WHOSE ADDRESS(ES) IS/ARE: 31 Clayton Street, Montgomery, AL 36104
[Name(s) of Attorney(s)] [Address(es) of Plaintiff(s) or Attorney(s)]

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT OR OTHER DOCUMENT WERE SERVED ON YOU OR A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT OR OTHER DOCUMENT.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY THE ALABAMA RULES OF CIVIL PROCEDURE TO SERVE PROCESS:

You are hereby commanded to serve this Summons and a copy of the Complaint or other document in this action upon the above-named Defendant.

Service by certified mail of this Summons is initiated upon the written request of J. Mitchell McGuire pursuant to the Alabama Rules of Civil Procedure. May 1, 2017
[Name(s)] (Date) (Signature of Clerk) (Name)

Certified Mail is hereby requested. [Signature]
(Plaintiff's Attorney's Signature)

RETURN ON SERVICE

Return receipt of certified mail received in this office on _____
(Date)

I certify that I personally delivered a copy of this Summons and Complaint or other document to _____
(Name of Person Served) in _____ County, Alabama on _____
(Name of County) (Date)

(Type of Process Server) (Server's Signature) (Address of Server)

(Server's Printed Name) (Phone Number of Server)

State of Alabama
Unified Judicial System

Form ARCiv-93 Rev. 5/99

COVER SHEET
CIRCUIT COURT – CIVIL CASE
(Not For Domestic Relations Cases)

Case Number
C V **2017 240** **JH**
Date of Filing: **05** **01** **2017**
Month Day Year
Judge Code: _____

GENERAL INFORMATION

IN THE CIRCUIT COURT OF Montgomery County, ALABAMA
(Name of County)
Reverend Tabitha Isner v. Jefferson S. Dunn
Plaintiff Defendant
First Plaintiff Business Individual Government Other
First Defendant Business Government Individual Other

NATURE OF SUIT: Select primary cause of action, by checking box (check only one) that best characterizes your action:


- TORTS: PERSONAL INJURY**
- WDEA - Wrongful Death
 - TONG - Negligence: General
 - TOMV - Negligence: Motor Vehicle
 - TOWA - Wantonness
 - TOPL - Product Liability/AEMLD
 - TOMM - Malpractice-Medical
 - TOLM - Malpractice-Legal
 - TOOM - Malpractice-Other
 - TBFM - Fraud/Bad Faith/Misrepresentation
 - TOXX - Other: _____
- 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

- 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

ORIGIN (check one): F INITIAL FILING A APPEAL FROM O OTHER:
DISTRICT COURT
R REMANDED T TRANSFERRED FROM
OTHER CIRCUIT COURT

HAS JURY TRIAL BEEN DEMANDED? YES 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: MONETARY AWARD REQUESTED NO MONETARY AWARD REQUESTED

ATTORNEY CODE: **M C G 0 4 4**
Date: May 1, 2017
Signature of Attorney/Party filing this form: 

MEDIATION REQUESTED: YES NO UNDECIDED



IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

REVEREND TABITHA ISNER,)
)
 Plaintiff / Petitioner,)

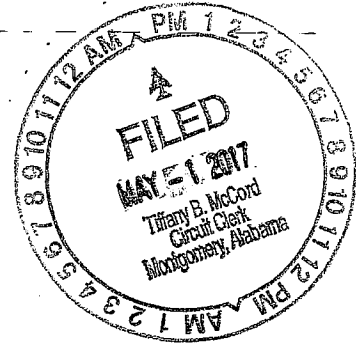
CIVIL ACTION NO. CV-17-240

J-H

vs.)

JEFFERSON S. DUNN, in his Personal)
 Capacity and Official Capacity as)
 Commissioner of the Alabama)
 Department of Corrections,)

Defendant / Respondent)



**COMPLAINT SEEKING A WRIT OF MANDAMUS AND DECLARATORY
JUDGMENT**

COMES NOW, the Plaintiff / Petitioner, Reverend Tabitha Isner (“Reverend Isner”), and pursuant to Alabama Code §§ 36-12-40 and 36-12-41, petitions this Court to issue a Writ of Mandamus to Jefferson S. Dunn, Commissioner of the Alabama Department of Corrections (“ADOC”), directing and ordering him to make available to her, for inspection and copying, the following public records:

1. Alabama’s current execution protocol.
2. Receipts, order forms, purchase orders, checks, and packing slips for any lethal injection drugs or substances ordered and / or received from September 1, 2014 to the date of this request.
3. Receipts, order forms, purchase orders, checks, and packing slips for any non-drug supplies and equipment, including, but not limited to, syringes, gurneys, straps, monitoring equipment, and infusers, related to executions by lethal injection ordered and / or received from September 1, 2014 to the date of this request.

4. Inventories and / or logs for all lethal injection drugs or substances maintained between September 1, 2014 and the date of this request, including records of the destruction, use, or disposal of said drugs or substances and their expiration dates.
5. Maintenance records and / or logs for all equipment used, or intended for use, in executions by lethal injection, including, but not limited to, monitoring equipment and infusers, from September 1, 2014 to the date of this request.
6. Writings and / or records of any kind, including, but not limited to manufacturers' labels, packaging, and inserts, for any lethal injection drugs bought or received from September 1, 2014 to the date of this request.
7. Any and all DEA licenses authorizing the ADOC to possess, order, and administer controlled substances for purposes of executions via lethal injection.
8. Any and all prescriptions written for purposes of ordering the drugs or other substances used for executions via lethal injection from September 1, 2014 to the date of this request.
9. Any correspondence, whether internal or external, concerning the ADOC's attempts to obtain drugs or other substances used for executions via lethal injection from September 1, 2014 to the date of this request.
10. All DEA 222 forms (also known as U.S. Official Order Forms for Schedules I and II) for drugs or substances used, or intended to be used, in executions by lethal injection from September 1, 2014 to the date of this request.
11. Records of any budget items specific to executions and any reports concerning the dispensation of funds allocated to the execution process.

12. All information and records concerning training for conducting executions by lethal injection and / or electrocution, including, but not limited to, conducting consciousness checks and reporting on the results of such consciousness checks during an execution.

The items requested are required to be disclosed pursuant to Alabama's Open Records Act, set forth in Alabama Code §§ 36-12-40 and -41. Commissioner Dunn and the ADOC have refused a written request, made through the required form and accompanied by the requested fee, to produce said documents for inspection and copying as required by statute and case law.

Pursuant to Alabama Code § 6-6-230, Reverend Isner also seeks a judgment declaring that Commissioner Dunn's refusal to make the requested documents available for inspection and copying is a violation of the Alabama Open Records Act, Alabama Code §§ 36-12-40 and -41.

As grounds for these requests, Reverend Isner states the following:

JURISDICTION AND VENUE

1. Reverend Isner invokes the jurisdiction of the Montgomery County Circuit Court pursuant to Alabama Code § 6-3-9, which provide that all actions involving the State's prison system, other than those concerning the condemnation of property, are to be commenced in Montgomery County. ALA. CODE § 6-3-9 ("All actions where the prison system or the state on account of the prison system is interested must be commenced in Montgomery County").

STATEMENT OF THE PARTIES

2. Reverend Isner, an ordained minister of the Christian Church (Disciples of Christ) who holds a Master of Divinity and Master of Public Policy from the University of Chicago, is a resident of the State of Alabama and over the age of nineteen.

3. Jefferson S. Dunn is the Commissioner of the ADOC. In this capacity, he is designated by the Alabama Legislature as the executive head of the ADOC. The ADOC

administers and controls the penal and corrections institutions throughout Alabama, including the facility designated for executing condemned inmates, Holman Correctional Facility.

STATEMENT OF FACTS

4. On April 19, 2017, Reverend Isner, using the ADOC's form and including the requisite fee, submitted a public records request to the ADOC seeking records concerning the ADOC's role in conducting executions, including information on the drugs purchased, possessed, and used, as well as training methods and other relevant documents. Ex. A (Public Records Request Form with Attached List (Apr. 19, 2017)).

5. Asked to provide her proposed use of the records, Reverend Isner explained, "As a member of the clergy, I feel a spiritual obligation to pray over executions. To do this most effectively, I need to have a detailed understanding of how executions are carried out." Ex. A.

6. Reverend Isner received a letter, dated April 21, 2017, in which the ADOC explained that it was denying the request because:

It is the position of the Department generally that execution related matters, including lethal injection matters and drugs used in connection with executions, are confidential and outside the purview of a public records request. We cannot, therefore, comply with your request.

Ex. B (Letter from Janice Hughes, Research and Planning Division, ADOC (Apr. 21, 2017)).

7. This action follows.

COUNT ONE – VIOLATION OF ALABAMA CODE § 36-12-40

8. Reverend Isner re-alleges paragraphs 1-7 as if set out here in full.

9. Commissioner Dunn's refusal to allow Reverend Isner to inspect and take a copy of the requested public writings violates the express provisions of the Alabama Open Records Act, Alabama Code § 36-23-40, which, in relevant part, provides, "Every citizen has a right to inspect

and take a copy of any public writing of this state, except as otherwise expressly provided by statute.” ALA. CODE § 36-12-40.

COUNT TWO – VIOLATION OF ALABAMA CODE § 36-12-41

10. Reverend Isner re-alleges paragraphs 1-9 as if set out here in full.

11. Commissioner Dunn’s refusal to allow Reverend Isner to inspect and take a copy of the requested public writings violates the express provisions of the Alabama Open Records Act, Alabama Code § 36-12-41, which provides:

Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing.

ALA. CODE § 36-12-41.


PRAYER FOR RELIEF

WHEREFORE the premises considered, Reverend Isner seeks the following relief:

- (a) Order Commissioner Dunn to grant Reverend Isner immediate access to the public writings she has requested.
- (b) Declare that Commissioner Dunn has violated Alabama Code §§ 36-12-40 and -41.
- (c) Such other further, different, or additional relief as this Honorable Court may deem just and proper, including, but not limited to, an award of attorneys’ and legal fees to Reverend Isner.

This 1st day of May, 2017.

Respectfully Submitted,



J. Mitchell McGuire (MCG044)
McGuire & Associates, LLC
31 Clayton Street
Montgomery, Alabama 36104
334-517-1000
jmcguire@MandAbusinesslaw.com

VERIFICATION

MONTGOMERY COUNTY)
) ss.
STATE OF ALABAMA)

I, the undersigned, Tabitha Isner, being first duly sworn, depose and say:

I have reviewed the complaint and the allegations therein which, to the best of my knowledge, information, and belief, are true and correct.

Tabitha K Isner
Tabitha Isner

Signed and sworn to (or affirmed) before me on April 28, 2017 by Tabitha Isner.

Leahariel Nelson
Notary Public
My commission expires: 1-16-2021



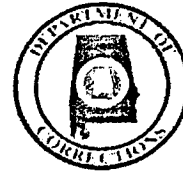
Exhibit A



ROBERT BENTLEY
GOVERNOR

State of Alabama Department of Corrections

Alabama Criminal Justice Center
Research & Planning Division
301 South Ripley Street
P. O. Box 301501
Montgomery, AL 36130-1501
(334) 353-9598



JEFFERSON S. DUNN
COMMISSIONER

PUBLIC RECORDS REQUEST FORM

To conserve taxpayer provided resources, there are policies and procedures governing the orderly production of public records for inspection and reproduction. All requests for inspection or copy of public records must be made in writing and submitted on this Public Records Request Form. Read and follow the attached INSTRUCTIONS FOR REQUESTING INSPECTION OR COPY OF PUBLIC RECORDS before submitting this Request. Please complete all information in the fields provided (type or print).

Name of Requesting Party: Tabitha Isner
 Organization Name: _____
 Mailing Address: 4349 White Acres Rd.
 Street or P.O. Box _____
 City: Montgomery State: AL Zip Code: 36106
 Telephone Number: 334-538-4822 Mobile Number: _____
 E-mail Address: isner.tabitha@gmail.com
 Description of Record(s) to be viewed and/or copied: See attached list

Proposed Use of Records: As a member of the clergy, I feel a spiritual obligation to pray over executions. To do this most effectively, I need to have a detailed understanding of how executions are carried out. (The Alabama Open Records Act and related case law allows state agencies to require a reason be provided to show a direct, legitimate interest in the specific document(s) requested. Your statement should communicate a direct interest in the specific records required (i.e. "I am a student doing a paper on...") and should not be general statements of entitlement (i.e. "I am a Taxpayer" or "It is a public document.")).

A non-refundable, minimum Processing Fee (as set forth in the attached Annex A – Public Records Production Cost Schedule) shall be due with submission of this form and must be in the form of cashier's check or money order. See the attached Instructions for Requesting Inspection or Copy of Public Records for further information on costs and other conditions.

I have read the INSTRUCTIONS FOR REQUESTING INSPECTION OR COPY OF PUBLIC RECORDS and agree to the terms and conditions stated therein, including the requirement for advance payment of the minimum Processing Fee, payment for estimated Production Cost, and payment of the final costs prior to production of the requested documents.

Tabitha Isner
 Signature of Requesting Party
 Tabitha Isner
 Print Name

April 19, 2017
 Date of Request

(ADOC recognizes and supports the public's right to inspect and request copies of public records in accordance with state law. Many public records are available on the ADOC website: www.doc.alabama.gov. Therefore, please view the website prior to submitting a request for records as your request may be satisfied by the information contained therein.)

The description of the records sought requires more space than is available on your form. The records requested are unredacted copies of the following:

1. Alabama's current execution protocol.
2. Receipts, order forms, purchase orders, checks, and packing slips for any lethal injection drugs or substances ordered and / or received from September 1, 2014 to the date of this request.
3. Receipts, order forms, purchase orders, checks, and packing slips for any non-drug supplies and equipment, including, but not limited to, syringes, gurneys, straps, monitoring equipment, and infusers, related to executions by lethal injection ordered and / or received from September 1, 2014 to the date of this request.
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Exhibit B



KAY IVEY
GOVERNOR

State of Alabama Department of Corrections

Alabama Criminal Justice Center
301 South Ripley Street
P. O. Box 301501
Montgomery, AL 36130-1501
(334) 353-3883



JEFFERSON S. DUNN
COMMISSIONER

April 21, 2017

Ms. Tabitha Isner
4349 White Acres Road
Montgomery, AL 36106

RE: Public Records Request dated April 19, 2017
Alabama Department of Corrections (ADOC) Reference No.: 17-204

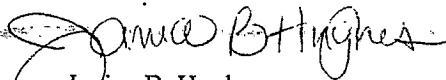
Ms. Isner:

I am in receipt of your public records request for information and records concerning execution protocol and other related execution and lethal injection procedures and records in Alabama.

It is the position of the Department generally that execution related matters, including lethal injection matters and drugs used in connection with executions, are confidential and outside the purview of a public records request. We cannot, therefore, comply with your request.

If you have any questions, please contact me at 334-353-9598.

Sincerely,


Janice B. Hughes
Research and Planning Division