

AFFIDAVIT OF JOHNNY MERRITT

THE STATE OF TEXAS

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COUNTY OF POTTER

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Before me, the undersigned, on this day personally appeared Johnny Merritt, who is personally known to me and first duly sworn according law upon his oath deposed and said:

1. "My name is JOHNNY MERRITT. I am over twenty-one (21) years of age. I have resided in Amarillo, Texas since 1988, I have never been convicted of a felony, and I am fully competent to make this affidavit.
2. I had the following personal conversations with District Attorney Danny Buck Davidson, regarding the pending theft case against Bernhardt Tiede (the "Tiede Theft Case"):
 - a. On January 20, 2015, Mr. Davidson told me during a telephone conversation between the two of us that he had "left a gift for the Nugent Family." He said that the Nugent Family should appreciate the fact that he "intentionally did not dismiss the theft charges just for an instance like this". He stated that because in excess of \$200,000 was stolen after Ms. Nugent's death, Mr. Tiede is facing First Degree Felony Charges. He further stated that Mr. Tiede could get a life sentence from this theft.
 - b. On January 23, 2015, Mr. Davidson told me during a telephone conversation between the two of us that Mr. Tiede is "dead in the water" because of the existing theft charge. He said that because Mr. Tiede stole in excess of \$200,000 after Marjorie's death, the prosecutor can get Bernie placed back in prison.
3. While representing the Nugent family with regard to Mr. Tiede's release from prison, I received the following letters which include statements relating to the Tiede Theft Case:
 - a. I received a copy of the letter attached as Exhibit "A" addressed to The Honorable Greg Abbott from Robert Underwood Esq., as attorney for "The Panola County Criminal District Attorney and Panola County District Attorney's Office". The reference line on the letter states it is a "Request for Attorney General Decision and Submission/Two (2) December 12, 2014 Shanna Nugent requests to Panola County Criminal District Attorney". This letter includes the following statements relating to the Tiede Theft Case:

"Government Code Section 552.108(a)(1) protects information relating to specific pending criminal investigation or prosecution. The indictment number 1997-C-104 styled the *State of Texas v. Bernhardt Tiede, II*, theft over \$200,000 is pending in the 123rd Judicial Court. It is a ten (10) count indictment for unlawfully appropriating money from Dr. Rod Nugent and the heirs of R.M. Nugent, which is Marjorie Nugent, after Tiede murdered her. The pending indictment and docket sheet are attached. The Criminal District Attorney has not dismissed the theft indictment" (first full paragraph on page 2 of the letter);

“The requested information contains evidence or information relevant to the specific investigation and prosecution of the felony theft indictment. The relevant information would largely be the bank statements and cancelled checks which may be used to prove the illegal withdrawals by Tiede from the Nugent accounts through a Power of Attorney after he murdered her” (third full paragraph on page 2 of the letter); and,

“The Criminal District Attorney Danny Buck Davidson of the 123rd Judicial Criminal District objects to any disclosure of the requested items. Clearly the theft case is pending. The murder case is pending since the Court of Criminal Appeals ordered a new murder punishment stage. All of the information items requested by the Requestor Nugent are potential exhibits to prove the motive, deception, fraud, and theft committed by Tiede in the murder and theft case” (first full paragraph on page 3 of the letter).

- b. I received a copy of the letter attached as Exhibit “B” addressed to The Honorable Greg Abbott from Robert Underwood Esq., as attorney for “Sherriff Kevin Lake and the Panola County Sheriff’s Office”. The reference line on the letter states it is a “Request for Attorney General Decision and Submission/Two (2) September 22, 2014 Shanna Nugent request to Panola County Sheriff Kevin Lake”. This letter includes the following statements relating to the Tiede Theft Case:

“Tiede was also indicted for theft in a multi-count indictment for appropriating money from the Nugent’s after he murdered her. The theft case has not been tried but is pending. (first full paragraph on page 2 of the letter);

“The Government Code Section 552.108(a)(1) protects information that pertains to specific pending criminal investigation or prosecution. The indictment number 1997-C-104 styled the *State of Texas v. Bernhardt Tiede, II*, theft over \$200,000 is pending in the 123rd Judicial Court. It is a ten (10) count indictment for unlawfully appropriating money from Dr. Rod Nugent and the heirs of R.M. Nugent, which is Marjorie Nugent, after Tiede murdered her. (second full paragraph within the section entitled “Reasons for exceptions to apply” on page 2 of the letter);

“The documents from the Nugent house still held by the Sheriff’s office contain evidence or information relevant to the specific investigation and prosecution of the pending felony theft indictment” (last paragraph on page 2 of the letter); and,

“The District Attorney Danny Buck Davison of the 123rd Judicial District objects to any disclosure of the requested items #3 and 4. Clearly the theft case is pending. (last paragraph on Page 3 of the letter).

Sworn this 24th day of March, 2016.

By: _____

Johnny Merritt

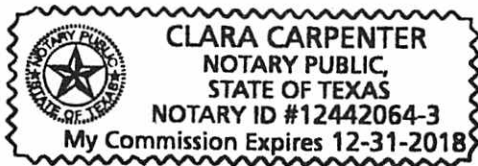
ACKNOWLEDGEMENT

STATE OF TEXAS

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COUNTY OF POTTER

SWORN TO AND SUBSCRIBED BEFORE ME by Johnny Merritt, who personally appeared before me on this day. Witness my hand and office seal or stamp this the 24th day of March, 2016.



Notary Public, State of Texas

My commission expires: 12-31-2018

[Handwritten signature]

[Handwritten signature]
12-31-2018

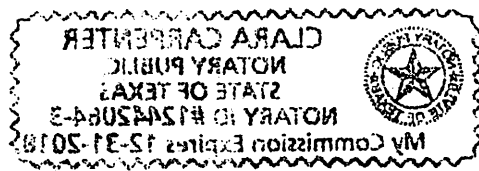


EXHIBIT A

N. 0075

UNDERWOOD LAW OFFICE

324 West Panola
P.O. Box 1138
Cathage, Texas 75633
Telephone: (903) 693-2303
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Robert Underwood
Texas Board of Legal Specialization
Civil Trial Law &
Personal Injury Trial Law
R. Collin Underwood

Via Certified Mail No. 7012 0470 0001 5041 4114

December 23, 2014

**THE HONORABLE GREG ABBOTT
TEXAS ATTORNEY GENERAL
ATTN: OPEN RECORDS DIVISION
PO BOX 12548
AUSTIN TX 78711-2548**

Re: Request for Attorney General Decision and Submission / Two (2) December 12, 2014 Shanna Nugent requests to Panola County Criminal District Attorney

Dear Attorney General Abbott:

This letter serves as submission to the Attorney General of Texas pursuant to Section 552.301(e) of the Public Information Act (the "Act"). The undersigned Attorney represents the Panola County Criminal District Attorney and Panola County Criminal District Attorney's Office in this matter. This letter serves as request for a decision by the Attorney General on the question that exceptions apply to withhold information which was requested by Shanna Nugent in the two (2) requests dated December 12, 2014.

Copies of the two (2) December 12, 2014 Shanna Nugent requests to Criminal District Attorney Danny Buck Davidson of Panola County are attached.

A signed statement by Criminal District Attorney Danny Buck Davidson is attached showing the Panola County Criminal District Attorney's Office received the "Request for Evidence and Waiver of Fees" and "Request for Public Documents and Waiver of Fees" from Shanna Nugent on December 16, 2014.

Background:

In November 1996 Bernie Tiede murdered Marjorie Nugent by shooting her with a gun and placed her body in a freezer. Her body was discovered in August of 1997. Tiede was convicted of murder and sentenced to life.

Tiede was also indicted for theft in a multi-count indictment for appropriating money from the Nugents after he murdered her. The theft case has not been tried but is pending. The theft indictment and docket sheet is attached.

In 2014 Tiede filed a writ of habeas corpus in the murder case in the Texas Court of Criminal Appeals. The Trial Court's Order in the writ recommended a new punishment phase of the murder

conviction. The Findings of Fact, Conclusions of Law, Recommendation and Order is attached. In November of 2014 the Texas Court of Criminal Appeals ordered a new sentencing trial. The Mandate is attached.

Reasons for exceptions to apply:

Government Code section 552.108(a)(1) protects information that pertains to specific pending criminal investigation or prosecution. The indictment number 1997 – C – 104 styled the *State of Texas versus Bernhardt Tiede II*, theft over \$200,000 is pending in the 123rd Judicial Court. It is a ten (10) count indictment for unlawfully appropriating money from Dr. Rod Nugent or the heirs of Mrs. R.M. Nugent, which is Marjorie Nugent, after Tiede murdered her. The pending indictment and docket sheet are attached. The Criminal District Attorney has not dismissed the theft indictment.

The term "information" is used to include all items requested.

The requested information contains evidence or information relevant to the specific investigation and prosecution of the pending felony theft indictment. The relevant information would largely be the bank statements and cancelled checks which may be used to prove the illegal withdrawals by Tiede from the Nugent accounts through a Power of Attorney after he murdered her. At this time none of the documents have been admitted into evidence. A representative sample of the information is labeled and attached.

The information is also relevant to the specific investigation and prosecution in the new punishment trial in the murder case since Tiede acted in a knowing deceptive course of conduct over several months by withdrawing large sums of money and spending or giving it away. This conduct may be relevant to explain why Tiede murdered her and hid her body in a freezer. The concealment of the body and deception in the withdrawals appears contrary to the "sudden passion/emotion" as stated on page 11 paragraph 64 of the Findings of Fact of the Trial Court. The deceptive conduct and deliberate acts of Tiede for a period of nine (9) months after the murder is relevant to prove the intentional murder and to rebut or counter the "new evidence" which arose in the Writ Hearing. The information withheld contains clear evidence of this conduct after the murder.

Additionally the information withheld contains evidence of the expenses and expenditures spent by Tiede and Marjorie Nugent prior to the murder. This evidence is relevant to rebut the alleged "verbal abuse" Tiede was subject to by Marjorie Nugent which is cited in the Findings of Fact, Conclusions of Law, Recommendations and Order on page 5 paragraph #26, and the "deteriorated" relationship between them cited on page 7 paragraph #43, and the reason Tiede could not end their relationship cited on page 8 paragraph #44. Evidence of the amount of money being spent can explain some of the "new evidence" arising from the writ.

In Requestor's "Request for Public Documents" includes correspondence from the deceased's family (#8), the opposing attorneys in the habeas corpus (#9), the mental experts in the murder trial and habeas corpus (#12). These items contain information which are involved in two active felony prosecutions and should not be disclosed with pending prosecution. The "decision making process" information requested in #13 is clearly exempt from disclosure.

December 23, 2014

The Criminal District Attorney Danny Buck Davidson of the 123rd Judicial Criminal District objects to any disclosure of the requested items. Clearly the theft case is pending. The murder case is pending since the Court of Criminal Appeals ordered a new murder punishment stage. All of the information items requested by the Requestor Nugent are potential exhibits to prove the motive, deception, fraud, and theft committed by Tiede in the murder and theft case.

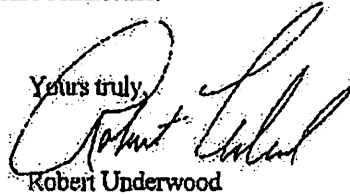
The copy of this letter sent to the requestor Shanna Nugent is being redacted pursuant to Government Code section 552.301(e-1) so to not reveal the substance of the information.

Therefore, based upon the foregoing exceptions the requested information should not be disclosed.

The same issues, exclusions, arguments are similar, if not identical, to the issues in the attached Texas Attorney General Letter Ruling OR2014-22528. The following items are identical in both requests: #4 laptop computer, #5 videos, #6 answering machine tape, #11 notes and cards.

If you should need additional information please contact me.

Thank you.

Yours truly,

Robert Underwood

Cc:
Shanna Nugent (Redacted copy)
Attorney at Law
14285 Midway Road Suite 130
Addison TX 75001
Via Fax

Criminal District Attorney Danny Buck Davidson

Attachments:

1. Two (2) Shanna Nugent Requests
2. Signed Statement by Criminal District Attorney regarding date
3. Two (2) Responses
4. Findings of Fact, Conclusions of Law, Recommendation and Order and Mandate
5. Two (2) Indictments
6. Theft Docket sheet
7. Documents labeled sample of Nugent records Gov. Code 552.108(a)(1)

EXHIBIT B

UNDERWOOD LAW OFFICE

324 West Panola
P.O. Box 1138
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Telephone: (903) 693-2303
Fax: (903) 693-2356

Robert Underwood
Texas Board of Legal Specialization
Civil Trial Law &
Personal Injury Trial Law
R. Collin Underwood

Via Certified Mail No. 7012 0470 0001 5041 4001

October 10, 2014

**THE HONORABLE GREG ABBOTT
TEXAS ATTORNEY GENERAL
ATTN: OPEN RECORDS DIVISION
PO BOX 12548
AUSTIN TX 78711-2548**

Re: Request for Attorney General Decision and Submission / September 22, 2014 Shanna Nugent request to Panola County Sheriff Kevin Lake

Dear Attorney General Abbott:

This letter serves as submission to the Attorney General of Texas pursuant to Section 552.301(e) of the Public Information Act (the "Act"). The undersigned Attorney represents Sheriff Kevin Lake and Panola County Sheriff's Office in this matter. This letter serves as request for a decision by the Attorney General on the question that exceptions apply to withhold information which was requested by Shanna Nugent.

A copy of the September 22, 2014 Shanna Nugent request to Sheriff Kevin Lake, Sheriff of Panola County is attached. The request was for six (6) items.

A signed statement by Sheriff Kevin Lake is attached that the Sheriff's Department of Panola County, Texas received the "Request for Public Documents and Waiver of Fees" from Shanna Nugent on September 22, 2014.

A copy of the Sheriff's response to Shanna Nugent's request is attached with the Sheriff's record of Evidence Inventory and Releases of computers and other property which was disclosed to the requestor.

The request item No. 3 "All videos removed from Bernie Tiede's house" and item No. 4 "All financial statements taken from either Bernie Tiede's house or Marjorie Nugent's house" are subject to exceptions in the Act and are excepted from public disclosure. These items were not disclosed.

Background:

In November 1996 Bernie Tiede murdered Marjorie Nugent by shooting her with a gun. Tiede was convicted of murder and sentenced to life.

Tiede was also indicted for theft in a multi-count indictment for appropriating money from the Nugents after he murdered her. The theft case has not been tried but is pending. The theft indictment and docket sheet is attached.

In 2014 Tiede filed a writ of habeas corpus in the murder case which is now pending before the Court of Criminal Appeals. The Trial Court's Order in the writ recommended a new punishment phase of the murder conviction. The Findings of Fact, Conclusions of Law, Recommendation and Order is attached. The requestor Shanna Nugent has filed pleadings in the murder case opposing the writ.

The #3 and #4 items requested were seized by the Sheriff's office pursuant to a search warrant after Marjorie Nugent was found in her freezer in August 1997. Tiede had shot her in November 1996, placed her in the freezer, and wrote checks on her account until his arrest in August 1997.

Reasons for exceptions to apply:

1. Government Code Section 552.108(a)(1) exception applies to the following:

A. "Financial statements" Requested Item 4

We understand the term "financial statements" to mean the formal record of financial status or position of a business or individual which would be balance sheets, income statements, cash flow statements. At this point the Sheriff has no knowledge of seizing nor possessing financial statements of either Bernie Tiede or Marjorie Nugent. A review of the released property list in the Sheriff's response to the request indicates many financial documents were returned to the Executor of the Estate of the Estate. The Sheriff's office does still possess documents from the Nugent house relating to [REDACTED]

This Government Code section 552.108(a)(1) protects information that pertains to specific pending criminal investigation or prosecution. The indictment number 1997 - C - 104 styled *the State of Texas versus Bernhardt Tiede II*, theft over \$200,000 is pending in the 123rd Judicial Court. It is a ten (10) count indictment for unlawfully appropriating money from Dr. Rod Nugent or the heirs of Mrs. R.M. Nugent, which is Marjorie Nugent, after Tiede murdered her. The indictment and docket sheet are attached.

The documents from the Nugent house still held by the Sheriff's office contain evidence or information relevant to the specific investigation and prosecution of the pending felony theft indictment. The relevant information would largely be [REDACTED] which may be used to prove the illegal withdrawals by Tiede from the Nugent accounts through a Power of Attorney after he murdered her. At this time none of the documents have been admitted into evidence. A representative sample of the information is labeled and attached.

The information is also relevant to the specific investigation and prosecution in the possible new punishment trial in the murder case since Tiede acted in a knowing deceptive course of conduct over several months by withdrawing large sums of money and spending or giving it away. This conduct may be relevant to explain why Tiede murdered her and hid her body in a freezer. The concealment of the body and deception in the withdrawals appears contrary to the "sudden passion/emotion" as stated on page 11 paragraph 64 of the Findings of Fact of the Trial Court. The deceptive conduct and deliberate acts of Tiede for a period of nine (9) months after the murder is relevant to prove the intentional murder and to rebut or counter the "new evidence" which arose in the Writ Hearing. The information withheld contains clear evidence of this conduct after the murder.

Additionally the information withheld contains evidence of the expenses and expenditures spent by Tiede and Marjorie Nugent prior to the murder. This evidence is relevant to rebut the alleged "verbal abuse" Tiede was subject to by Marjorie Nugent which is cited in the Findings of Fact, Conclusions of Law, Recommendations and Order on page 5 paragraph #26, and the "deteriorated" relationship between them cited on page 7 paragraph #43, and the reason Tiede could not end their relationship cited on page 8 paragraph #44. Evidence of the amount of money being spent can explain some of the "new evidence" arising from the writ.

B. "All videos removed from Bernie Tiede's house" Requested Item 3

The Sheriff's department seized [REDACTED] VHS tapes from the Tiede house. Attached is an inventory of the tapes. [REDACTED] tapes are untitled, and [REDACTED] are titled. One (1) tape #16 is in an unopened wrapper. . (See tape inventory) [REDACTED] tape # [REDACTED] shows a child opening presents. [REDACTED] tapes will not play. Of the remaining tapes [REDACTED] tapes do not contain images of sexual conduct. The remaining [REDACTED] tapes are depicting [REDACTED]

The collection of seventy-six (76) tapes taken as a whole are relevant information to a cross examination of Tiede or the reputation witnesses or direct or cross of expert opinion testimony from behavioral or mental experts in the punishment or sentencing phase of a criminal trial for a brutal murder of an elderly woman or for theft of a large sum of money from an elderly woman with deception over a long period of time. It is the overall nature or theme of the tapes which is relevant. The past behavioral and mental issues are extremely relevant evidence in a new punishment trial.

A tape inventory with a tape description and a representative sample of the fifty-five (55) tapes is labeled and attached.

The District Attorney Danny Buck Davidson of the 123rd Judicial District objects to any disclosure of the requested items #3 and 4. Clearly the theft case is pending. The murder case is pending since the Court of Criminal Appeals can order the murder punishment stage reversed and order a new trial on punishment based on the Trial Court's Recommendations.

October 10, 2014

2. Government Code Section 552.101 exception applies to the "all videos removed from Bernie Tiede's house" Item 3

This section exempt from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. It encompasses common-law privacy and constitutional privacy. Common-law privacy protects information if the information contains highly intimate or embarrassing facts the publication which would be highly objectionable to a reasonable person, and information is not of legitimate concern to the public. *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S. W. 2d 668, 685 (Tex. 1976).

Constitutional privacy consist of two interrelated types of privacy. Open Records Decision No.455 at 4 (1987). The first type protects an individual's autonomy within zones of privacy which include matters related to marriage, procreation, contraception, family relationships, child rearing and education. The second type of constitutional privacy requires a balancing between the individual's privacy interest and the public's need to know information of public concern. The scope of information protected is narrower than under the common-law doctrine of privacy. A tape inventory with a tape description and a representative sample of the fifty-five (55) tapes are labeled and attached. (same sample as previously noted)

The Sheriff's department seized [REDACTED] VHS tapes from the Tiede house. Attached is an inventory of the tapes. In the [REDACTED] tapes the majority of the tapes show [REDACTED] [REDACTED] These tapes were recorded prior to the arrest of Tiede. These [REDACTED] tapes show conduct which is clearly highly intimate and embarrassing such that their release would be highly objectionable to a person of ordinary sensibilities, and there is no legitimate public interest in the disclosure to the public of the tapes.

Notice has been given to Bernie Tiede through his attorney, Jodi Cole, of Austin pursuant to Government Code section 552.305. A copy is attached.

The copy of this letter sent to the requestor is being redacted pursuant to Government Code section 552.301(e-1) so to not reveal the substance of the information.

We are withdrawing exception Government Code section 552.103 which was cited in Sheriff's Lake's Request dated October 1, 2014.

Therefore, based upon the foregoing exceptions the financial statements/ documents and videos should not be disclosed.

If you should need additional information please contact me.

Thank you.

Yours truly,

Robert Underwood

Attachments:

1. Shanna Nugent Request
2. Signed Statement by Sheriff re date
3. Sheriff's response
4. Finds of Fact, Conclusions of Law, Recommendation and Order
5. Two (2) Indictments
6. Theft Docket sheet
7. Tape inventory and tape description
8. Documents labeled sample of Nugent records Gov. Code 552.108(a)(1)
9. CD labeled sample of [REDACTED] tapes Gov. Code 552.108(a)(1) and 552.101
10. Letter to Bernie Tiede