

NO. 000000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 186th JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

**DEFENDANT'S MOTION FOR PRODUCTION
OF OFFICER'S PERSONNEL RECORDS**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves that this Court order the production of the San Antonio Police Department "Central 201 file" and any other personnel records reflecting charges, complaints or grievances filed, or disciplinary proceedings relating to, instances of physical violence or brutality or drug usage instituted against John Jones and for good cause shows the following:

I.

John Jones is the deceased complainant. He was a San Antonio Police Officer.

II.

As an employee of the City of San Antonio, John Jones has a "Central 201 file," or personnel file, which will contain records of charges, complaints, grievances and disciplinary proceedings relating to instances of physical violence or brutality or drug usage on Mr. Jones's behalf.

III.

Information contained in Mr. Jones's "Central 201 file" will establish the number of physical altercations and confrontations had with citizens and thus will have a bearing on defendant's assertion of self-defense, sudden passion, and mitigation of punishment.

IV.

The requested information may be admissible under article 38.36 of the Texas Code of Criminal Procedure.

V.

The information is not privileged, or, if privileged, then the privilege must give way to the overriding interest defendant has in preparing and presenting his case and in order to preserve defendant's right to confront and cross-examine the witnesses against him and to effective assistance of counsel and compulsory process, the Sixth Amendment to the United States Constitution and Article I § 10 of the Texas Constitution and his right to "due process" guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I §§ 13 and 19 of the Texas Constitution.

VI.

The defendant asserts that:

1. The items requested are in the exclusive possession, custody and control of the State of Texas or the United States Government by and through its agents, the police or the prosecuting attorney's office, and the Defendant has no other means of ascertaining the disclosures requested.
2. The items requested are not privileged.
3. The items and information are material to this cause and the issues of guilt or innocence and punishment to be determined in this cause.
4. The Defendant cannot safely go to trial without production of the requested items, such information and inspection, nor can the Defendant adequately prepare the defense to the charges against him.
5. The absent such discovery the Defendant's rights under Article 39.14, Article I, §§ 3, 10, 13 and 19 of the Constitution of the State of Texas, and the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States of America will be violated, to his irreparable injury and thus deprive the Defendant of a fair trial herein.

WHEREFORE, PREMISES CONSIDERED, defendant respectfully requests that he be allowed to inspect, copy or photograph the aforementioned records prior to trial. In the alternative, Defendant requests that this Court conduct an in-camera inspection of these records to determine questions of materiality, relevance and privilege.

Respectfully submitted:

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Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the above and foregoing Defendant's Motion has been delivered to the District Attorney's Office, Bexar County Justice Center; 300 Dolorosa; San Antonio, Texas, on March 12, 2013.

MARK STEVENS

ORDER

On this the ___ day of _____, 2013, came to be considered Defendant's Motion for Production, and said motion is hereby

(GRANTED)

(DENIED)

JUDGE PRESIDING