

EX PARTE	§	IN THE DISTRICT COURT
	§	TARRANT COUNTY, TEXAS
BARTON R. GAINES	§	213TH JUDICIAL DISTRICT

Applicant's Notice of Deposition on Written Questions for Records

To: **the City of Waco, Dillon Meek, the Mayor of the City of Waco**, by and through his attorney of record, **Jennifer Richie, the Waco City Attorney**, City Hall - 2nd Floor, 300 Austin Avenue, Waco, Texas 76102, (254) 750-5680.

1. Please take notice that, under Texas Rule of Civil Procedure 201.1, applicant, Barton R. Gaines, will take the deposition on written questions of the City of Ft. Worth's , Betsy Price's, custodian of records on (date): _____, at (time): _____. In the aforesaid Courtroom in the **Tim Curry Criminal Justice Center** on the eighth floor, 401 W. Belknap Street, **Fort Worth**, Texas 76196-0217. **The Mayor of the City of Waco, Dillon Meek**, is directed to designate a person or persons to testify on its behalf about the following matters
 - a. The photographs discussed on pages 3-4 of the Waco PD Rpt. in Waco PD case number 00-078478.¹
2. The deposition will continue from day to day until completed.
3. The deposition will be taken by the Court Reporter, Shelia Walker, for the aforesaid Court.
4. Under Rules 176.2(b) and 200.1(b), the custodian of the records for **the Mayor of the City of Waco, Dillon Meek**, is required to produce at the deposition:

¹ Also see pages 99-100 of Appendix 3 attached to applicant's affidavit attached to his application for habeas corpus under 11.07.

- a. The photographs discussed on pages 3-4 of the Waco PD Rpt. in Waco PD case number 00-078478.²

Respectfully submitted,

By: _____
BARTON R. GAINES, Pro Se
244 Siesta Court
Granbury, Texas 76048
Tel.: 682-500-7326
Email bartongaines@gmail.com

² Also see pages 99-100 of Appendix 3 attached to applicant's affidavit attached to his application for habeas corpus under 11.07.

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The State of Texas
Subpoena Deposition For Production of Documents

To: Any sheriff or constable of the State of Texas or other person authorized to serve and execute subpoenas as provided in Texas Rule of Civil Procedure 176.5.

You are commanded to summon **the City of Waco, Dillon Meek, the Mayor of the City of Waco**, by and through his attorney of record, **Jennifer Richie**, the **Waco City Attorney**, City Hall - 2nd Floor, 300 Austin Avenue, Waco, Texas 76102, (254) 750-5680, or wherever found, to appear at 401 W. Belknap St., Ft. Worth, TEXAS 76196, in the aforementioned Judicial District Court, on (date): _____, at (time): _____, to produce and permit inspection and copying of the following documents or tangible things to be used as evidence in this case:

- a. The photographs discussed on pages 3-4 of the Waco PD Rpt. in Waco PD case number 00-078478.¹

Duties of Person Served with Subpoena. You are advised that under Texas Rule of Civil Procedure 176, a person served with a subpoena has certain rights and obligations. Rule 176.6 provides the following:

(a) Compliance required. Except as provided in this subdivision, a person served with a subpoena must comply with the command stated therein unless discharged by the court or by the party summoning such witness. A person commanded to appear and give testimony must remain at the place of deposition, hearing, or trial from day to day until discharged by the court or by the party summoning the witness.

(b) Organizations. If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(c) Production of documents or tangible things. A person commanded to produce documents or tangible things need not appear in person at the time and place of production unless the person is also commanded to attend and give testimony, either in the same subpoena or a separate one. A person must produce documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand. A person may withhold material or information claimed to be privileged but must comply with Rule 193.3. A nonparty's production of a document authenticates the document for use against the nonparty to the same extent as a party's production of a document is authenticated for use against the party under Rule 193.7.

¹ Also see pages 99-100 of Appendix 3 attached to applicant's affidavit attached to his application for habeas corpus under 11.07.

(d) Objections. A person commanded to produce or permit inspection or copying of designated documents and things may serve on the party requesting issuance of the subpoena - before the time specified for compliance - written objections to producing any or all of the designated materials. A person need not comply with the part of a subpoena to which objection is made as provided in this paragraph unless ordered to do so by the court. The party requesting the subpoena may move for such an order at any time after an objection is made.

(e) Protective orders. A person commanded to appear at a deposition, hearing, or trial, or to produce and permit inspection and copying of designated documents and things, and any other person affected by the subpoena, may move for a protective order under Rule 192.6(b) - before the time specified for compliance - either in the court in which the action is pending or in a district court in the county where the subpoena was served. The person must serve the motion on all parties in accordance with Rule 21 a. A person need not comply with the part of a subpoena from which protection is sought under this paragraph unless ordered to do so by the court. The party requesting the subpoena may seek such an order at any time after the motion for protection is filed.

(f) Trial subpoenas. A person commanded to attend and give testimony, or to produce documents or things, at a hearing or trial, may object or move for protective order before the court at the time and place specified for compliance, rather than under paragraphs (d) and (e).

Contempt. Failure by any person without adequate excuse to obey a subpoena served on the person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement or both. Tex. R. Civ. P. 176.8(a).

DO NOT FAIL to return this writ to [identify court in which case is pending] with either the attached officer's return showing the manner of execution or the witness's signed memorandum showing that the witness accepted the subpoena.

This subpoena was issued at the request of Applicant Barton R. Gaines, whose attorney of record is Barton R. Gaines, 244 Siesta Court, Granbury, Texas, 76048, Tel: 682-500-2753. You may contact Barton R. Gaines's attorney to arrange another time and date.

ISSUED on _____, 2021.

By: _____
Deputy District Clerk
_____, District Clerk
Tarrant Co., Tex.
401 W. Belknap
Ft. Worth, Texas. 76196

Return of Service of Subpoena

I, _____, delivered a copy of this subpoena to **Dillon Meek** in person at _____, in _____, County, Texas, on _____, 2021, at _____ o'clock __.m., and tendered to the witness a fee of \$ _____ in cash.

I, _____, was unable to deliver a copy of this subpoena to **Dillon Meek** for the following reasons: _____

By Deputy: _____

Sheriff/Constable _____

Tarrant County, Texas

Acceptance of service of subpoena by Witness under Texas Rule of Civil Procedure 176

I accept service of this subpoena.

Witness

Date

FEE FOR SERVICE OF SUBPOENA: \$ _____

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Applicant's Deposition On Written Questions For Records

To: **the City of Waco, Dillon Meek, the Mayor of the City of Waco**, by and through his attorney of record, **Jennifer Richie**, the **Waco City Attorney**, City Hall - 2nd Floor, 300 Austin Avenue, Waco, Texas 76102, (254) 750-5680.

Applicant, Barton R. Gaines, serves this request for production on the above, as allowed by *Texas Rule of Civil Procedure* 196. The above must produce all requested documents (as they are kept in the ordinary course of business or organized and labeled to correspond with categories in each request) for inspection and copying, not more than 30 days after service in the aforesaid Court room on the eighth floor of the **Tim Curry Criminal Justice Center**, 401 W. Belknap Street, Ft. Worth, Texas 76196-0217.

Instructions

1. Answer each request for documents separately by listing the documents and by describing them as defined below. If documents produced in response to this request are numbered for production, in each response provide both the information that identifies the document and the document's number.
2. For a document that no longer exists or that cannot be located, identify the document, state how and when it passed out of existence or could no longer be located, and the reason for the disappearance. Also, identify each person having knowledge about the disposition or loss of the document, and identify any other document's evidencing the lost documents existence or any facts about the lost document.
 - a. When identifying the document, you must state the following:
 - i. the nature of the document (for example, letters, handwritten note).
 - ii. The title or heading that appears on the document.
 - iii. The date of the document in the date of each addendum, supplement, or other addition or change.
 - iv. The identities of the author, signer of the document, and person on whose behalf or at whose request or direction the document was prepared or delivered
 - b. When identifying the person, you must State the following:
 1. The Full name.
 2. The present or last known residential address in residential telephone number.

3. The present or last known office address and office telephone number.
4. The present occupation, job title, employer, employers address.

Definitions

1. "Applicant" or "respondent", as well as a party's full or abbreviated name or a pronoun referring to a party, means the party, and when applicable, the party's agents, representatives, officers, directors, employees, partners, corporate agents, subsidiaries, affiliates, or any other person acting in concert with the party or under the party's control, whether directly or indirectly, including any attorney.
2. "You" or "your" means the **City of Waco**, its successors, predecessors, divisions, subsidiaries, present and former officers, agents, employees, and all other persons acting on behalf of respondent or its successors, predecessors, divisions, and subsidiaries.
3. "Document" means all written, typed, or printed matters and all magnetic, electronic, or other records or documentation of any kind or description in your actual possession, custody, or control, including those in the possession, custody, or control of any and all present or former directors, officers, employees, consultants, accountants, attorneys, or other agents, whether or not prepared by you, that constitute or contain matters relevant to the subject matter of the action. "Document" Includes, but is not limited to, the following: letters, reports, charts, diagrams, correspondence, telegrams, memoranda, notes, records, minutes, contracts, agreements, records or notations of telephone or personal conversations or conferences, interoffice communications, email, microfilm, bulletins, circulars, pamphlets, photographs, faxes, invoices, tape recordings, computer printouts, drafts,, resumes, logs, worksheet, etc.
4. "Electronic or magnetic data" means electronic information that is stored in a medium from which it can be retrieved and examined. The term refers to the original (or identical duplicates when the original is not available) and any other copies of the data that may have attached comments, notes, marks, or highlighting of any kind. Electronic or magnetic data includes, but is not limited to, the following: computer programs; operating systems; computer activity logs; programming notes or instructions; email receipts, messages, or transmissions; output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs, and outlines; metadata; PIF and PDF files; batch files; deleted files; temporary files; Internet- or web-browser-generated information stored in textual, graphical, or audio format, including history files, caches, and cookies etc.; and any miscellaneous files or file fragments. electronic or magnetic data includes any item stored on magnetic, Optical, digital, or other electronic storage media, such as hard drives, floppy disk, CD-ROMs, DVD's, tapes, smart card, integrated circuits cards (for example Sam cards), removable media (for example Zip drives, Jaz cartridges), microfiche, punch cards, etc. Electronic or magnetic data also includes the file, folder, tabs, containers, and labels attached to or associated with any physical storage device with each original or copy.
5. "Possession, custody, or control" of any item means that the person either has physical possession of the item or has a right to possession equal or superior to that of the person who has physical possession of the item.
6. "Person" means any natural person, corporation, firm, Association, partnership, joint venture, proprietorship, governmental body, or any other organization, business, or legal entity, and all predecessors or successors in interest.

7. "Mobile device" means any cellular Telephone, satellite telephone, pager, personal digital assistant, handheld computer, electronic rolodex, walkie-talkie, or any combination of these devices

Deposition on Written Questions

1. Please state your full name, occupation, official title, and business address.
2. Are you the custodian of records for the **City of Waco**?
3. In your capacity as custodian of records for the **City of Waco**, are you familiar with whether they maintain records of its business activities?
4. Are the records of the **City of Waco** kept under your care, supervision, custody, or control?
5. Was it in the regular course of business activity of the **City of Waco** for its employees with personal knowledge of the act or event described in the requested records to make such record or to transmit such information to be included in the records?
6. Were
 - a. The photographs discussed on pages 3-4 of the Waco PD Rpt. in Waco PD case number 00-078478.¹ made at or near the time of the act or event described in the records, or within a reasonable time thereafter:
7. Were
 - a. The photographs discussed on pages 3-4 of the Waco PD Rpt. in Waco PD case number 00-078478.² made and kept in the regular course of daily business activities by the **City of Waco**.
8. Were
 - a. The photographs discussed on pages 3-4 of the Waco PD Rpt. in Waco PD case number 00-078478.³

¹ Also see pages 99-100 of Appendix 3 attached to applicant's affidavit attached to his application for habeas corpus under 11.07.

² Also see pages 99-100 of Appendix 3 attached to applicant's affidavit attached to his application for habeas corpus under 11.07.

³ Also see pages 99-100 of Appendix 3 attached to applicant's affidavit attached to his application for habeas corpus under 11.07.

transmitted to your files, and did you maintain the records as part of your official duties as the custodian of records?

9. Please hand the originals or exact duplicates of

a. The photographs discussed on pages 3-4 of the Waco PD Rpt. in Waco PD case number 00-078478.⁴
to the court reporter taking your deposition for photocopying and attachment to this deposition. Have you now given all of the requested records identified above to the court reporter taking your deposition? If not, identify for the court reporter the records and documents you did not produce and explain why you did not produce them.

10. In the event you are unable to find any of the requested records in applicant's subpoena, or otherwise requested herein, how long does the **City of Waco** maintain its files, and does **City of Waco** ever destroy its files and when?

11. Are you aware of any other entities or persons that may have possession of records pertaining to the subject matter of this lawsuit? If so, please state the name and address of such other entity or person, if known.

12. Have you been requested or directed by any person to withhold or protect, for any reason, the requested records identified in applicant's subpoena, or otherwise requested herein? If so, please state the name and address of the person who conveyed this information to you and when such event occurred?

13. Do you know or have reason to believe that the requested records identified in applicant's subpoena, or otherwise requested herein, have in any manner been edited, purged, culled, or otherwise altered? If so, please identify the records and explain why and how they were altered or removed.

⁴ Also see pages 99-100 of Appendix 3 attached to applicant's affidavit attached to his application for habeas corpus under 11.07.

14. If any document responsive to the requested records identified in applicant's subpoena, or otherwise requested herein was, but is no longer, in your possession, custody, or control, or no longer exists, state whether

- a. It is missing or lost,
- b. It was destroyed,
- c. It was transferred to others, or
- d. It was otherwise disposed of, and explain the circumstances surrounding its disposition, including the date of such disposition.

Respectfully submitted,

By: _____
BARTON R. GAINES, Pro Se
244 Siesta Court
Granbury, Texas 76048
Tel.: 682-500-7326
Email bartongaines@gmail.com