

# **Bond Case Briefs**

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## **GOVERNMENT RECORDS - TEXAS**

### **Fox v. State**

**Court of Appeals of Texas, Texarkana - December 4, 2013 - S.W.3d - 2013 WL 6244662**

After repeated arrests, Robert James Fox resolved to sue the City of Jacksonville under the Texas Tort Claims Act. To this end, Fox created a document captioned, "CLAIM: NOTICE TO CURE/NOTICE OF INTENT TO SUE AS PRESENTED BY AFFIDAVIT OF Robert James Fox." The claim asserted, among other things, that the Jacksonville Police Department commenced a "series of attacks by force of arms" on three separate occasions. Fox further claimed his December 3 arrest and the events leading up to it were the result of retaliation, discrimination, religious persecution, and included torture.

Fox filed his notice among the miscellaneous documents in the County Clerk's Office of Smith County on January 6, 2009. Once filed, a copy of the document became a part of the records of the County Clerk of Smith County. After filing the notice in Smith County, Fox delivered the notice to Betty Thompson, the City Secretary for Jacksonville. After stamping the notice as "received" by the City of Jacksonville, Thompson delivered the notice to the city manager, the city attorney, and the human resources director for the City of Jacksonville. The city manager delivered the notice to Daniel.

On January 23, 2009, Fox was arrested for tampering with a governmental document. The indictment alleged that Fox presented or used a governmental record, i.e., the notice filed with the County Clerk of Smith County, by presenting the notice to the City of Jacksonville, with the intent to harm or defraud the City, with knowledge of its falsity as the document purported "to be a complaint, summons, or other Court Process and/or claiming retaliation and/or discrimination and/or religious persecution and/or torture."

After a jury trial at which Fox represented himself with standby counsel available, Fox was found guilty of tampering with a governmental record and was sentenced to one year of incarceration and fine of \$10,000. Fox appealed, claiming, among other things, that the evidence was insufficient to support his conviction. The court of appeals agreed.

The Court of Appeals held that:

- Defendant's delivery of notice of claim to city secretary transformed such notice into governmental record;
- Evidence countering claims in notice of claim did not establish that defendant knew such claims were false when they were made;
- Evidence that defendant knew that allegations of discrimination, religious persecution, retaliation, and torture were false when made was insufficient to support conviction; and
- Evidence that defendant presented notice of claim to city with intent that it be taken as genuine governmental record by presenting or using document filed with county clerk was insufficient to support conviction.

"At most, the foregoing testimony supports the proposition that these witnesses disagree with Fox's

allegations. This testimony does not, however, get at the root of the issue—Fox’s knowledge that the claims were false. Stated differently, the State was required to prove not only that the specific allegations of discrimination, retaliation, religious persecution, and torture were false, but that Fox was aware that they were false. In this task, the State failed.”

“The foregoing evidence is insufficient to prove Fox knew the allegations of discrimination, religious persecution, retaliation, and torture were false. Fox’s allegations are merely that—allegations—to be accepted or rejected in a civil proceeding.”