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CAUSE NO. D-1-GN-13-003876

SAVE OUR SPRINGS ALLIANCE, INC.	§	IN THE DISTRICT COURT
	§	
	§	
Plaintiff,	§	
	§	
V.	§	53RD JUDICIAL DISTRICT
	§	
GERALD DAUGHERTY	§	
In His Official Capacity as	§	
Travis County Commissioner	§	
for Precinct 3	§	
	§	
Defendant.	§	TRAVIS COUNTY, TEXAS

ORAL DEPOSITION OF
 GERALD THOMAS DAUGHERTY
 FEBRUARY 20, 2014

ORAL DEPOSITION OF GERALD THOMAS DAUGHERTY, produced as a witness at the instance of the Plaintiff, and duly sworn, was taken in the above-styled and numbered cause on the 20th day of February, 2014, from 9:08 a.m. to 11:42 a.m., before Shelly M. Tucker, CSR in and for the State of Texas, reported by machine shorthand at the Travis County Attorney's Office, 314 West 11th Street, Suite 420, Austin, Texas, pursuant to the Texas Rules of Civil Procedure and/or the provisions stated on the record.

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A P P E A R A N C E S

FOR THE PLAINTIFF:

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ALSO PRESENT:

Amy Pollack, Travis County

1 GERALD THOMAS DAUGHERTY,
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. BUNCH:

5 Q. Good morning, Commissioner Daugherty. I'm Bill
6 Bunch. I'm attorney for the plaintiff in this case, Save
7 Our Springs Alliance, versus yourself in your official
8 capacity.

9 Are you generally familiar with that
10 lawsuit?

11 A. Yes.

12 Q. I'd like to just go through some introductory
13 matters and make sure we're on the same page and we
14 understand each other today.

15 A. Okay.

16 Q. Just to begin, can you just state your full name
17 for the record and where you reside.

18 A. Gerald Thomas Daugherty. And I reside in
19 Austin, Texas.

20 Q. Okay. First, since this is being recorded
21 stenographically by the court reporter, can we try to not
22 talk over each other so that we have a clear record?

23 A. Absolutely.

24 Q. I'll do my best if you'll do yours.

25 Also, can we try to have verbal answers,

1 yes and no, rather than just head nods? Because we also
2 need that on the record.

3 A. Yes.

4 Q. This is not an endurance contest. If at any
5 time you need to take a bathroom break or just need a
6 rest, could you speak up and just let us know?

7 A. Absolutely.

8 Q. Okay. Could we agree, though, that you'll do
9 that before I ask a question and not after I've asked the
10 question and before you've answered?

11 A. Yes.

12 Q. And can I ask you to not -- if I ask a
13 complicated question that you don't fully understand, if
14 you would ask me to repeat it for clarity rather than try
15 to guess at what you think the question might be?

16 A. Yes.

17 Q. Okay. Are you under any sort of medication or
18 other conditions that might not allow you to fully
19 understand this proceeding and give truthful answers?

20 A. No.

21 Q. Okay. Have you ever had your deposition taken
22 before?

23 A. I don't recollect ever having been deposed.

24 Q. You're a lucky man.

25 Okay. That being said, you understand that

1 you are under oath today just as you would be in the
2 courtroom and pledged to tell the truth?

3 A. I do.

4 Q. Okay. If I refer to the lawsuit or the public
5 information request at issue here, will you understand
6 that -- what we mean just generically?

7 A. I will.

8 (Exhibit 1 marked)

9 Q. I've asked the court reporter --

10 MR. NELSON: Can we stop for a second on
11 that?

12 MR. BUNCH: Sure.

13 MR. NELSON: You-all have submitted
14 multiple public information requests so --

15 MR. BUNCH: Right.

16 MR. NELSON: -- I'm going to ask you to be
17 specific as to which one when you're asking him about a
18 public information request --

19 MR. BUNCH: Okay.

20 MR. NELSON: -- to his office.

21 MR. BUNCH: All right. I can do that.

22 Q. (BY MR. BUNCH) Let me show you what's been
23 marked as Exhibit 1 and ask you if you recognize that
24 document.

25 A. (Witness reviews document.) This is the first

1 time, Bill, that I've read it in this much detail.

2 Q. And what is it?

3 A. What is this?

4 Q. Yes.

5 A. From what I understand, it's a request for
6 public information.

7 Q. And does that match the public information
8 request that at some point you saw that is the subject of
9 this lawsuit?

10 A. I think so.

11 Q. Okay. Can you just tell me how you first saw
12 the public information request that was provided to your
13 office on or about May 10th of 2013 from Save Our Springs
14 Alliance?

15 A. I don't recall seeing or reading in any sort of
16 detail what I'm assuming that you're asking
17 document-wise.

18 Q. Well, how did you come to know about the
19 request?

20 A. Generally speaking, Barbara Smith, my assistant,
21 took the information. She was generally the first one to
22 see any correspondence that came to me, and she would
23 come and pretty much earmark something that -- "I think
24 that you need to -- that you need to see this." So
25 that's what I recall at the time. That's when I really

1 think that that got my attention, that that was something
2 that I needed to provide.

3 Q. Okay. And in saying earmarked, does that
4 suggest that she printed it out and showed it to you?

5 A. Most of the time that was what she did.

6 Q. Okay. Do you -- can you -- do you remember
7 specifically what happened with this particular request?

8 A. What I recall is that anytime that I would get
9 correspondence of this nature, I would ask Barbara to
10 address it, knowing that if there was any question as to
11 whether or not we needed to be responding to something
12 that might be legal, that we would correspond to the
13 county attorney's office and generally get our direction
14 from our county attorney.

15 Q. Okay. And did you instruct her to pass it on to
16 the county attorney?

17 A. I don't know that I recall giving her that
18 information. I'm fairly sure that that's what Barbara
19 would have done.

20 Q. Okay. And when she first brought it to your
21 attention, did you read the request?

22 A. Cursorily.

23 Q. Okay. And did you give her any other
24 instructions after your cursory reading of the request?

25 A. I did. I said, "Whatever it is that's being

1 asked of us and the county attorney says that this is
2 something that we need to do, then we certainly need to
3 comply with it."

4 Q. Okay. And did you give any instructions to any
5 of your other office staff relative to the information
6 request?

7 A. I recall one particular instance where I said,
8 "Any information, folks, that we have with -- on
9 45 Southwest that is being asked, we need to provide, you
10 know, the material that we have." So yes, I do recall
11 saying that.

12 Q. Was that in a staff meeting to your entire staff
13 or who was -- who was that with?

14 A. Generally there were just really two people. I
15 have three people on staff. I have an office manager,
16 administrative assistant, which they're all kind of
17 referred to as, and that's Barbara Smith. And then Bob
18 Moore. Not that Martin Zamzow, that being the third one,
19 is not aware of things that are going on. But this
20 subject matter would have been dealt with mainly by
21 Barbara Smith and Bob Moore.

22 Q. Okay. And your discovery responses indicated
23 that Ms. Smith retired in January of this year.

24 A. She did.

25 Q. Is that correct?

1 A. She did.

2 Q. Was she in a different county position before
3 she was working for you?

4 A. Yeah. She worked for me during most of my first
5 six years in office, from 2002 to 2008. And she was
6 retained by the county during the time -- the four years
7 that I was gone.

8 Q. Okay. And did her retirement have any relation
9 to this particular lawsuit and how -- and her role in
10 that?

11 A. I don't think so.

12 Q. Okay. How did you come to know that she was
13 interested in retiring?

14 A. She came to me in the late fall and said,
15 "Gerald, I really think that it's time for me to retire."
16 She had, for the last six months, taken care of her
17 mother that is since deceased. And I think Barbara just
18 felt like with her age that she still had a lot of life
19 in her.

20 And she told me, she said, "I love working
21 for you, Gerald, and quite frankly I probably would have
22 retired, you know, before you came back. But I think
23 it's time for me to retire." And I said, "That's great,
24 if that's what you want to do."

25 Q. Okay. So there was -- before her retirement,

1 there was -- was there ever any conflict between you and
2 her as to how to handle the response to this information
3 request?

4 A. Never.

5 Q. Okay. You mentioned your previous service as
6 county commissioner.

7 A. Uh-huh.

8 Q. The -- which years were those again, please?

9 A. 2002 to 2008.

10 Q. And during that term, I assume you handled lots
11 of public information requests as well?

12 A. Well, we certainly handled anything that was
13 specifically directed at us. But quite frankly, there
14 were not a lot of requests in that first six years.

15 Q. There were some, though?

16 A. I don't recollect specifically. But I would
17 imagine that there were, you know, instances where that
18 was -- where that was requested.

19 Q. Okay. You don't remember any specific time when
20 you were looking for documents that had been requested by
21 a news reporter or someone else?

22 A. I do not specifically remember any of that.

23 Q. Okay. In your discovery responses you state
24 that you took your Public Information Act training in
25 your first term. Do you recall that statement?

1 A. I do --

2 Q. Okay.

3 A. -- recall that. I do recall that statement.

4 Q. Okay. And what is the basis for that statement?

5 A. What I remember is that that is something
6 that -- whenever you first come into office, that is a
7 requirement that you -- that you take that course. So
8 that's what I recollect. Do I recollect -- remember
9 taking it? No.

10 Q. So you just think that you did because it was a
11 requirement then, but you don't remember actually doing
12 it?

13 A. Correct.

14 Q. So you wouldn't remember an instructor for such
15 a course? You just wouldn't remember?

16 A. No.

17 Q. Okay. And you've looked to try to find some
18 records of that and have been unsuccessful finding any?

19 A. Correct. We did look and we couldn't find
20 record of that.

21 Q. And so then taking office in your current term,
22 you did not take training at the outset. Is that
23 correct?

24 A. I did not.

25 Q. Okay. And then you did take a training course

1 more recently?

2 A. I did.

3 Q. When was that?

4 A. In the last 30 to 45 days.

5 Q. And who was the instructor for that course?

6 A. It was on video. And it was someone from the
7 AG's office that was giving it. I don't recall her name.

8 Q. Okay. And how many -- what was the length of
9 that course?

10 A. 61 minutes.

11 Q. Okay.

12 A. Specifically I can remember when we pulled it up
13 it said it was going to take 61 minutes to do.

14 Q. Okay. And you just watched that in your
15 office --

16 A. I did.

17 Q. -- on your computer?

18 A. I did.

19 Q. Did anyone else watch that with you, your other
20 staffmembers or --

21 A. No one watched it with me.

22 Q. Okay. Do you recognize that you are the
23 official custodian of records for your commissioners
24 office?

25 A. I do.

1 Q. In that training session that you watched
2 online, did you learn anything new about the Public
3 Information Act that you didn't know before?

4 A. I don't think so.

5 Q. Okay. Before I go back to sort of trying to
6 understand what exactly you did in responding to our
7 request, let me just ask you. Your discovery requests
8 indicate that you have a cell phone that's yours and not
9 the county's. Is that correct?

10 A. That's correct.

11 Q. And you do not have a county-issued cell phone?

12 A. I do not.

13 Q. Okay. And what kind of cell phone do you have?

14 A. An iPhone.

15 Q. Okay. And do you get any sort of allowance from
16 the county to help pay for that bill?

17 A. I do not.

18 Q. Have you had any other phone since you took
19 office in January of last year?

20 A. No.

21 Q. Okay. You've indicated you have your official
22 Travis County e-mail address.

23 A. Correct.

24 Q. And one other e-mail address.

25 A. Right.

1 Q. That I believe is a Roadrunner address?

2 A. It is.

3 Q. Okay. Do you have any other e-mail addresses
4 that you use?

5 A. No.

6 Q. You do not have a Gmail account?

7 A. I only have a Roadrunner account.

8 Q. Okay. Do you have a Yahoo! account?

9 A. I do not.

10 Q. Okay. Do you ever use an e-mail address of your
11 wife or any other person?

12 A. No.

13 Q. Okay. Do you have a Twitter account?

14 A. No. Well, if I have a Twitter account, it would
15 have -- it would have been during my campaign. And I
16 don't think I've ever tweeted.

17 Q. Okay.

18 A. So if I have one, I personally have never used
19 it.

20 Q. Okay. And do you have a Facebook account?

21 A. I think there is one from the campaign that
22 still is active.

23 Q. Okay. And have you used that at times to post
24 about county business since you took office in January
25 2013?

1 A. No.

2 Q. Okay. Would anybody on your staff have used
3 that for any kind of correspondence concerning county
4 business?

5 A. Can I ask a question about --

6 Q. If you need to clarify the question --

7 MR. NELSON: If you don't understand the
8 question, you can ask for clarification.

9 Q. (BY MR. BUNCH) Yes.

10 A. I think I -- I understand the question, I think.

11 MR. NELSON: Can you reask the question,
12 please.

13 A. Please, yeah.

14 Q. (BY MR. BUNCH) Do you know if any of your
15 office staff have used your Facebook account to post
16 information concerning county business since you took
17 office in January 2013?

18 THE WITNESS: Is it permissible for me to
19 ask you --

20 MR. NELSON: Hold on for a second -- no.
21 Objection, form.

22 Q. (BY MR. BUNCH) You can still answer the
23 question. Please do.

24 MR. NELSON: He's asking you for your
25 personal knowledge. Do you know.

1 A. I would think technically the answer to that
2 would be yes.

3 Q. (BY MR. BUNCH) Okay. And what --

4 MR. NELSON: Hold on.

5 Q. (BY MR. BUNCH) -- what specifically are you
6 thinking of?

7 MR. NELSON: Hold on, hold on. Objection,
8 responsiveness.

9 Q. (BY MR. BUNCH) And what specific incident are
10 you thinking of?

11 A. I'm trying to figure out whether the fact that
12 somebody would respond out of our office through the
13 Facebook that might have just come from a -- either a
14 question or an accusation on a Facebook, with that -- if
15 I would have responded to that, would that have been
16 technically what you're talking about.

17 But as far as posting something on a
18 Facebook that was informational from my office, no. To
19 my knowledge, that wasn't --

20 Q. So there may have been some response but not --

21 A. Yes.

22 Q. -- you know, "Here, let's post this press
23 release" --

24 A. Yes.

25 Q. -- or --

1 A. Yes.

2 Q. Okay.

3 A. And that's the reason that I was wanting to make
4 sure that I was answering it properly. So no, I don't
5 think that -- to my knowledge, that would not have been
6 done.

7 Q. Okay.

8 A. The few times that has -- that there has been
9 correspondence through Facebook has been a response.
10 I -- as little as I do that, if I thought that someone
11 was incorrect in what they were saying on the Facebook, I
12 would respond to them about "I don't think that you have
13 the information with what you had said in a Facebook
14 message." But I have not posted anything that would I --
15 that I would have considered to have been county
16 information.

17 Q. Okay. So if -- so the postings you're thinking
18 of were from you individually, not from your
19 staffmembers?

20 A. Barbara Smith might have responded. I might
21 have said, "Barbara, respond to that and let's put this
22 in there."

23 So there might have been something like
24 that.

25 Q. Okay. And did -- in responding to the SOS May

1 10th public information request, did you ever discuss
2 looking at the Facebook account to see if there was
3 anything responsive?

4 A. I didn't, no.

5 Q. Okay. You mentioned the -- your Roadrunner
6 e-mail account.

7 A. Uh-huh.

8 Q. Is that the only e-mail account you have had
9 other than your official Travis County e-mail account
10 since you took office in January 2013?

11 A. Yes.

12 Q. Did you have a different account for the
13 campaign?

14 A. I'm not sure.

15 Q. Okay. You don't know?

16 A. Don't know.

17 Q. Who would know the answer to that question?

18 A. Kathy Pillmore.

19 Q. Was she your campaign manager?

20 A. Pretty much.

21 Q. Okay. Could you spell Pillmore for me.

22 A. P-i-l-l-m-o-r-e.

23 Q. Okay.

24 A. And Kathy with a K and a Y.

25 Q. Okay. And do you know how she's currently

1 employed?

2 A. She's not.

3 Q. Okay.

4 A. Effectively, no.

5 Q. Okay. Is she here in Austin?

6 A. She is.

7 Q. Okay. Other than Mr. Moore and Mr. Zamzow,
8 Ms. Smith, and now Ms. Gessner, have you had any other
9 executive assistants working in your office since January
10 of 2013?

11 A. Yes.

12 Q. And who was that?

13 A. Jim Strickland.

14 Q. And when did he work for you as an executive
15 assistant?

16 A. Well, he worked as just office help and that
17 was, you know, probably -- that would be starting late
18 spring, somewhere in there. I can't -- I don't recall
19 the exact time but --

20 Q. Okay. Late spring until when?

21 A. Probably end of the summer, roughly.

22 Q. Okay. So he would have been working in your
23 office in May when we filed the -- this information
24 request?

25 A. I think so. I don't recall specifically the

1 time that Jim really started working for us.

2 Q. Okay. Do you -- can you tell me what you
3 remember about Mr. Strickland's involvement, if any, in
4 your office's efforts to respond to our May public
5 information request?

6 A. Oh. Well, he was gone by that time. And quite
7 frankly, I mean, what he did in the office, he probably
8 wouldn't have known anything about it. We trained him to
9 be someone that could fill in if one of my people were
10 sick.

11 Q. Okay. Why would he have been gone if he started
12 in late spring and we filed the information request in
13 May?

14 A. Well, I can't -- oh, why would he would have
15 been -- I'm sorry. Would you repeat that question?

16 Q. Well, you said -- you just said he was -- he was
17 gone by that time. And so my question is, why would he
18 have been gone at that time if he started in late spring
19 and we filed the information request in May?

20 A. Well, he left because he had the opportunity to
21 go get a full-time job. So that's the reason he left.

22 Q. But that's -- you said that was at the end of
23 the summer.

24 A. I can't be -- I'm probably -- I may not be very
25 accurate as to when he left. But, you know, that would

1 be --

2 Q. Okay.

3 A. -- that would be --

4 Q. Do you have any recollection of Mr. Strickland
5 being involved in any way in your office's efforts to
6 respond to our May public information request?

7 A. No.

8 Q. Okay. Do you know if Mr. Moore has taken a
9 public information training course?

10 A. I do not know.

11 Q. Do you know if Mr. Zamzow has done so?

12 A. I do not know, no.

13 Q. Do you know if Ms. Smith had done so?

14 A. I do not know.

15 Q. When our May public information request first
16 came in and Ms. Smith then contacted the county
17 attorney's office, do you know which county attorney that
18 she first contacted?

19 A. Ms. Winn is the person that is I think in charge
20 of that.

21 Q. All right. Do you remember coordinating with
22 any other attorneys -- not in the litigation, but in the
23 initial response -- other than Ms. Winn?

24 A. No.

25 Q. Okay. Can you tell me Ms. Narvaiz's role in

1 relation to 45 Southwest?

2 A. Susan Narvaiz's role was to be the coordinator
3 for the subcommittee with regards to scheduling of
4 anything that had to be scheduled. And quite frankly if
5 there was anything that had to be -- fact-finding, she
6 was asked to do that. But that's -- that was her basic
7 role.

8 Q. Okay. And did she work at your direction?

9 A. Mostly.

10 Q. Were you the one who hired her for that role?

11 A. Yes.

12 Q. Okay. And who paid her for her services?

13 A. I did.

14 Q. Okay. Out of which accounts?

15 A. Out of my officeholder account.

16 Q. Okay. That would be county funds?

17 A. No.

18 Q. Or campaign funds?

19 A. Campaign funds.

20 Q. Okay. But this -- her work for you was not
21 related to a campaign. Is that correct?

22 A. No.

23 Q. Okay.

24 MR. BUNCH: Could we mark that as 2?

25 (Exhibit 2 marked)

1 MR. NELSON: Off the record real quick.

2 (Discussion off the record)

3 Q. (BY MR. BUNCH) Okay. Commissioner Daugherty,
4 I've handed you a document of five pages that's been
5 marked as Deposition Exhibit 2. And I would ask you to
6 identify those pages if you are able.

7 A. Yes. I recognize them.

8 Q. And what are they?

9 A. They're invoices to Susan Narvaiz.

10 Q. And the hand notation on these -- most of these
11 indicates that the invoices were paid. Is that correct?

12 A. Correct.

13 Q. And refers to check numbers?

14 A. Correct.

15 Q. And that would be your campaign officeholder
16 account?

17 A. Correct.

18 Q. The client line is blank. Do you see that?

19 A. Oh, that one has a client -- oh, client. Okay.
20 All right. I do -- I do recognize that.

21 Q. Okay. Was the client name redacted or was it
22 just left empty in the original, if you know?

23 A. Left empty.

24 Q. Okay. And why is that?

25 MR. NELSON: Objection, form.

1 You can answer -- if you know, you can
2 answer.

3 A. I don't know.

4 Q. (BY MR. BUNCH) Okay. So Ms. Narvaiz was
5 assisting you in your role as the Southwest 45 committee
6 chair for CAMPO. Is that correct?

7 A. Correct.

8 Q. And who else was on that committee?

9 A. Commissioner Mark Jones out of Hays County. And
10 at the beginning, Councilman Bill Spellman.

11 Q. Okay.

12 A. And then after Bill Spellman left, Bob Larsen
13 from the Barton Springs/Edwards Aquifer District board.

14 Q. Okay. And in some of the notices -- or actually
15 not notices but e-mail traffic about those meetings,
16 there's -- Rebecca Bray is listed. Who is Ms. Bray?

17 A. Rebecca is -- or Becky is an engineer, a traffic
18 engineer, and she is someone that would just give us
19 information on engineering, you know, as it pertained to
20 roadways.

21 Q. And who was paying her for her services?

22 A. She was not paid.

23 Q. She was volunteering?

24 A. She was volunteering.

25 Q. She was invited to all the meetings?

1 A. Generally.

2 Q. Is the committee still meeting?

3 A. It is if I call a meeting.

4 Q. Okay. Were there ever any public notices given
5 of the committee's meetings?

6 A. No.

7 Q. And why was that?

8 A. Just didn't give public notice.

9 Q. Okay. Were there ever any meeting minutes kept
10 of the committee's meetings?

11 A. No.

12 Q. Did the committee ever take any votes on any
13 actions?

14 A. No.

15 Q. Who appointed the committee?

16 A. Commissioner Conley, the CAMPO chairman.

17 Q. Okay. I'm going to go and try to get straight a
18 few other people that -- whose names popped up in some of
19 the information that you were -- provided to us.

20 Michael Aulick participated in some of the
21 committee meetings. Is that correct?

22 A. Correct.

23 Q. And was he representing any particular party?

24 A. I think he works -- I'm pretty sure that he
25 works for Hays County, has a contract, you know, to where

1 he is a consultant for Hays County.

2 Q. And that consulting role relates to
3 45 Southwest?

4 A. No, I don't think it does. I think it -- I
5 think that he is just a consultant to the Hays County
6 commissioners court with regards to transportation as
7 it -- and as -- particularly as it pertains to CAMPO.
8 That's my understanding.

9 Q. Okay. So in that broader context, that would
10 include 45 as a subset. Is that correct?

11 A. I think it could be, yes.

12 Q. Okay. Who is Doug Booher?

13 A. Doug Booher is -- I'm pretty sure he's a TxDOT
14 engineer that works in the environmental -- I know that
15 he and Carlos Swonke worked together for TxDOT in -- on
16 that environmental team.

17 Q. The environmental team concerning 45 Southwest?

18 A. With TxDOT, yes.

19 Q. Okay. Do you know who the primary point person
20 from TxDOT is on the 45 Southwest project?

21 A. Yes. I mean, I think that it is Carlos Swonke.

22 Q. Okay.

23 A. I mean, from the environmental --

24 Q. Right.

25 A. -- standpoint.

1 Q. Okay. Is there a project manager or somebody
2 above Mr. Swonke at TxDOT that is in charge for
3 45 Southwest?

4 A. I don't know that there -- I'm not aware of who
5 specifically is in charge of -- I don't -- I don't think
6 there is a person in charge of 45 Southwest.

7 Q. Okay. There's not a project manager that you
8 know of at TxDOT?

9 A. Huh-uh.

10 Q. Okay. Who is Bill Chapman?

11 A. Bill Chapman is with the RMA.

12 Q. Okay. He's an employee?

13 A. Yes.

14 Q. Okay. Who is John Hille, H-i-l-l-e?

15 A. He is an assistant county attorney with Travis
16 County.

17 Q. Okay. And who is Steve Paulson?

18 A. Steve Paulson is an environmental engineer with
19 his own company and I -- I think he's ACS or -- but he's
20 a -- he's an environmental -- he's an independent
21 consultant.

22 Q. And has he been contracted by one of the
23 agencies to work on 45 Southwest?

24 A. To my knowledge, he has not.

25 Q. There may be another name or two that I need

1 your help with but I'll come back to that.

2 So help me understand. You have your cell
3 phone and I assume you have some sort of desktop computer
4 in your office here?

5 A. I do.

6 Q. Okay. And then at home, if you're using your
7 e-mail account, what do you actually work on?

8 A. Laptop.

9 MR. NELSON: Object -- hold on. Objection,
10 form.

11 Q. (BY MR. BUNCH) A lap -- you have a laptop?

12 A. I do.

13 Q. Is there any other computer device at your home
14 that you might do work on from time to time?

15 A. My --

16 MR. NELSON: Objection -- hold on.

17 Objection, form.

18 Now you can answer.

19 A. My wife has a computer.

20 Q. (BY MR. BUNCH) And you'll use her computer from
21 time to time?

22 A. As --

23 MR. NELSON: Objection, form.

24 MR. BUNCH: Can you explain yourself?

25 MR. NELSON: Sure.

1 MR. BUNCH: This is kind of annoying.

2 MR. NELSON: Well, I'm going to object to
3 your sidebar comments. You're not being specific. I'm
4 objecting as to it being a vague question. "That he can
5 work on" does not advise as to whether you're asking is
6 he doing county work, is he doing personal work. It's
7 very vague and ambiguous in your question.

8 Q. (BY MR. BUNCH) Okay. What kind of computer
9 does your wife have?

10 A. Her new computer is an Apple.

11 Q. And when did she get that?

12 A. Oh, in the last six months.

13 Q. And there have been occasions when you've used
14 that computer to undertake county business?

15 A. No.

16 Q. Okay. And what computer did she have before
17 this new one?

18 A. A Dell.

19 Q. And was there ever occasion that you would do
20 county business on that computer?

21 A. Yes.

22 Q. Do you still have that computer?

23 A. No.

24 Q. Was -- how was it disposed of?

25 A. I think we gave it to Seton to be used in their

1 rehabilitation department.

2 Q. And did you record your contents before you gave
3 it away on a hard drive or some other recording device?

4 A. I did not.

5 Q. Do you know if your wife did?

6 A. To my knowledge she did not.

7 Q. And did anybody else --

8 A. No.

9 Q. -- make a recording?

10 A. No.

11 Q. Okay. And when did y'all give that to Seton?

12 A. In the last 45 days.

13 Q. Okay. Do you have any other tablets or other
14 computers that you would do -- you would -- could
15 potentially have done county business on --

16 MR. NELSON: Objection, form.

17 MR. BUNCH: I'm not finished with my
18 question.

19 MR. NELSON: Okay.

20 Q. (BY MR. BUNCH) -- other than your county
21 computer, your home laptop?

22 MR. NELSON: Hold on. I just wanted to
23 give him the courtesy of finishing. Objection, form.

24 If you understand the question, you can
25 answer.

1 THE WITNESS: Yeah.

2 A. No.

3 Q. (BY MR. BUNCH) Okay. Do you own a tablet?

4 A. No.

5 Q. Do you own more than one cell phone?

6 A. No.

7 Q. Okay. I want to ask you about your
8 interrogatory responses.

9 (Exhibit 3 marked)

10 Q. I've shown you what's been marked as Deposition
11 Exhibit 3 and I would ask you if you recognize that
12 document.

13 A. No.

14 MR. NELSON: I want to ask you to look at
15 the entire document.

16 A. Then I stand corrected. I do recognize some of
17 this.

18 Q. (BY MR. BUNCH) Okay. Can you tell me what your
19 understanding is of Deposition Exhibit 3?

20 A. That apparently -- it seems to me that it is a
21 copy of interrogatory questions.

22 Q. You don't remember preparing the answers to
23 those interrogatories?

24 A. I do.

25 Q. Okay.

1 MR. NELSON: And I'm going to object to
2 form.

3 Q. (BY MR. BUNCH) I'd ask you to look at your
4 answer to interrogatory number 3.

5 A. Okay.

6 MR. NELSON: And just for the record, it's
7 front and back. I think you've already picked up on
8 that.

9 Go ahead.

10 Q. (BY MR. BUNCH) Yeah. We're looking at pages
11 marked 6 and 7 of 12. The bulk of your answer there is
12 listing the documents that were provided to the attorney
13 general's office in which your attorneys were asking to
14 be withheld from public release.

15 Do you see that?

16 A. I do see that.

17 Q. Can you look at the document that's described by
18 number 11?

19 A. Is that number 11 as in 1 through 12?

20 Q. Yes.

21 A. Okay.

22 Q. Yes.

23 And my question is, are any of the people
24 named in number 11 attorneys?

25 A. I don't know who Heidi is so -- the other names

1 are not attorneys.

2 Q. Okay. The next number, 12 --

3 A. Uh-huh.

4 Q. -- references a June 4th, 2009 report of 17
5 pages. Are you familiar with that document?

6 A. No.

7 Q. Did you participate in a 45 Southwest committee
8 of some sort in June of 2009?

9 A. I don't think so. I was out of office.

10 Q. Okay. So you don't have any recollection of
11 that particular document?

12 A. No.

13 Q. Okay. So if you could look at Deposition -- or
14 excuse me -- interrogatory number 6 and your answer on
15 page 9 of 12, and if you could take a minute to refer
16 back to interrogatories 4 and 5 since those are
17 referenced in the question.

18 A. (Witness reviews document.) Okay.

19 Q. Is there anything in your written answer, number
20 6, that you would change or correct today?

21 A. I don't think so.

22 MR. NELSON: Object -- hold on. Objection,
23 form.

24 Q. (BY MR. BUNCH) Okay. The question -- and
25 referring back to -- interrogatories number 4 and 5 refer

1 to both e-mail accounts and cell phone accounts.

2 A. Uh-huh.

3 Q. And your answer here addresses your cell phone
4 accounts. My question to you is, did you make any effort
5 to search or query your personal e-mail records in
6 response to our May 10th public information request?

7 A. Yes.

8 Q. Explain what you did.

9 A. Went back and looked on my personal e-mail at
10 home to see if there were any things that pertained to
11 45 Southwest. And if there were those things, then I
12 sent them on to Barbara knowing that she was the one that
13 was compiling, you know, the information. And that's
14 how.

15 Q. So you did find some?

16 A. I don't recall. But if they were in there, I
17 mean, I sent them.

18 Q. If they were there, you sent them, but you don't
19 remember if there were any?

20 A. No, not really.

21 Q. Do you use your personal e-mail account every
22 day, on average?

23 MR. NELSON: Objection, form.

24 A. No, not every day.

25 Q. (BY MR. BUNCH) Okay. How often would you say

1 you use your personal e-mail account?

2 MR. NELSON: Objection, form.

3 A. Some days I don't use it at all. Some days I
4 use it a few times.

5 Q. (BY MR. BUNCH) Is your personal e-mail account
6 forwarded to your cell phone?

7 A. Yes.

8 Q. And was it that way in the first half of 2013?

9 A. Yes.

10 Q. Do you -- have you ever exchanged any e-mails on
11 your personal account with Commissioner Will Conley?

12 A. Probably.

13 Q. And do you have an e-mail address for
14 Commissioner Conley that's other than his official Hays
15 County e-mail address?

16 A. I don't know what e-mail address I have on my
17 phone for Commissioner Conley. I assume that it's his
18 officeholder account.

19 Q. But you don't know?

20 A. No.

21 Q. Do you have your cell phone with you where you
22 could look at your contact information?

23 A. I don't have my cell phone with me.

24 Q. Okay. Can you look and let me know after this
25 deposition, if your attorney agrees, as to whether you

1 have an e-mail address for Commissioner Conley that's
2 other than his official Hays County e-mail address?

3 MR. NELSON: If you want to leave a blank
4 in the deposition for that, I'm agreeable to him
5 supplementing that information if he has a different
6 address for him.

7 A. Absolutely.

8 Q. (BY MR. BUNCH) Is that okay with you?

9 A. Absolutely.

10 Q. All right. Thank you.

11 A. (Please provide your answer on the "Changes and
12 Corrections" page found at page 75.)

13 Q. And could we have the same agreement concerning
14 Commissioner Mark Jones?

15 A. (Nods head.)

16 MR. NELSON: Yes.

17 A. Yes.

18 Q. (BY MR. BUNCH) And do --

19 A. Yes.

20 Q. Do you know today whether you might have, other
21 than his official address, Commissioner Jones' personal
22 e-mail address?

23 A. I think I only have his official county e-mail.

24 Q. Okay.

25 A. But I'll also let you know that as well.

1 Q. Okay. All right.

2 A. (Please provide your answer on the "Changes and
3 Corrections" page found at page 75.)

4 Q. Back to interrogatory number 6, in looking for
5 any personal e-mails that you might have, did you also
6 make any effort to look at your wife's Dell computer?

7 MR. NELSON: Objection, form.

8 A. I probably did. I probably did.

9 MR. NELSON: Well, don't guess. And he
10 asked you at the beginning of the deposition to -- if you
11 don't know, don't guess. So if you --

12 A. No.

13 MR. NELSON: -- know, you know. If you
14 don't, you don't.

15 A. Then no.

16 Q. (BY MR. BUNCH) You don't know?

17 A. I don't know.

18 Q. Your answer here indicates that you did not
19 direct your staff -- office staffmembers to look for
20 their -- through their personal cell phone accounts for
21 potentially responsive text messages. Is that correct?

22 A. It appears so.

23 Q. Okay. And would the same be true for -- that
24 you did not also ask them to look for e-mail messages
25 that might be responsive that were on their personal

1 e-mail accounts?

2 A. That is correct.

3 Q. Do you ever have occasion to correspond with
4 Mr. Moore in your office concerning county business where
5 that correspondence is directed to Mr. Moore's personal
6 e-mail accounts?

7 A. No.

8 Q. Okay. Do you know if he has a separate personal
9 e-mail address?

10 A. I don't know.

11 Q. So if you had ever e-mailed to him about county
12 business on a personal e-mail account, you wouldn't be
13 aware of it?

14 A. No.

15 MR. NELSON: Objection -- hold on.

16 Objection, form.

17 Q. (BY MR. BUNCH) Okay. On interrogatory number
18 7, you reference a records retention policy. Do you see
19 that?

20 A. I do.

21 Q. Okay. Do you know when your office adopted that
22 records retention policy?

23 A. I do not.

24 Q. Do you know if adopting this referenced records
25 retention policy was memorialized in any way?

1 A. No.

2 MR. NELSON: Um -- go ahead.

3 Q. (BY MR. BUNCH) Do you know the method as to how
4 that records retention policy was adopted?

5 A. I do.

6 Q. And what was that?

7 A. There was one in place, from what I understand,
8 that was put in place by my predecessor. And it is my
9 understanding that that stays in place unless you change
10 it yourself or unless -- you know, for some other reason
11 that you want that changed.

12 Q. So it's your understanding that that policy for
13 your office was adopted by a predecessor officeholder and
14 you simply inherited it?

15 A. That's what I understand.

16 Q. Okay. And on interrogatory number 8 it refers
17 to a general records retention policy for the county. Is
18 that correct?

19 A. Yes.

20 Q. Do you know when that policy was adopted?

21 A. No.

22 Q. Okay. On interrogatory number 9 -- since May
23 10th of 2013, have you ever undertaken to delete any
24 e-mails on either your personal or county accounts that
25 address Travis County business?

1 MR. NELSON: Objection, form.

2 A. Yes.

3 Q. (BY MR. BUNCH) Okay. And can you tell me what
4 you're thinking of?

5 A. I delete an awful lot of Keep MoPac Local.
6 Because I have been barraged with them. And I will
7 oftentimes just delete.

8 Q. Okay. Are there any other messages that might
9 be relevant to 45 Southwest that you recall deleting?

10 A. Yes.

11 Q. And tell me what you're thinking of.

12 A. The ones that come to me talking about how they
13 feel like I am wrong in my desire to build 45 Southwest,
14 I delete them.

15 Q. And do you know if your staff also deletes those
16 messages if they receive them?

17 A. I don't think they do that, no.

18 Q. And why do you think that they do not?

19 A. Anything that pertains to something where it is
20 of obvious great importance in the office, which
21 45 Southwest is, no one deletes -- or very -- I don't
22 know that I can recall of any time that people would
23 delete that without showing it to me.

24 Q. And what is your basis for that belief?

25 A. It's just such an important subject matter to me

1 that I don't believe there's anyone in the office that
2 would delete anything with -- that has 45 Southwest on it
3 because they know that I would at least want to see it.

4 Q. Have you ever instructed your staff to not
5 delete county business e-mails?

6 A. No.

7 Q. Are you generally familiar with the Austin
8 Bulldog lawsuit against the city council concerning open
9 meetings issues?

10 A. Somewhat.

11 Q. Okay. And can you tell me your understanding of
12 that matter?

13 A. I think it's the one where they were e-mailing,
14 texting, corresponding with each other, oftentimes from
15 the dais, about subject matter that could have been -- in
16 some instances should have been for public knowledge.

17 Q. Okay.

18 A. If that's the one that I'm recollecting.

19 Q. And do you know -- do -- are you aware of how
20 that particular matter was ultimately resolved?

21 A. Not really, no.

22 Q. Okay. When you took office in January of 2013,
23 did -- what was your understanding of whether e-mails on
24 your personal e-mail account that involved Travis County
25 business was either public information or not public

1 information?

2 A. I think I knew that it was public information,
3 that it was county business.

4 Q. That it didn't matter what account it was on.
5 Is that --

6 A. That's right.

7 Q. Okay. I asked you about deleting e-mails. What
8 about deleting text messages?

9 A. Same. I do delete text messages.

10 Q. Okay. And do you have occasion to discuss
11 county business by text message?

12 A. Occasionally, yes.

13 Q. And how frequently would you estimate that would
14 be?

15 A. Not very frequent.

16 Q. It's not like a daily occurrence?

17 A. No.

18 Q. If I could ask you to look at your -- the
19 question and your answer to interrogatory number 11,
20 please.

21 A. (Witness reviews document.)

22 Q. Okay. As the earlier one we discussed, this
23 question asks about both e-mail accounts and personal
24 cell phone accounts. So my question is, why did you only
25 answer as to cell phone accounts?

1 A. I didn't really pay attention enough to respond
2 to the -- to the inquiry.

3 Q. Okay. Between January -- early January of 2013
4 and May, our information request, did you on occasion
5 exchange e-mail with former County Judge Bill Aleshire
6 concerning 45 Southwest?

7 A. Yes.

8 Q. And do you remember if that was on your county
9 e-mail address or your personal e-mail address?

10 A. I don't recall.

11 Q. Do you correspond with Judge Aleshire from time
12 to time on your personal e-mail account?

13 A. No. I correspond with him on my text.

14 Q. Okay. And that would be on your phone -- your
15 cell phone number?

16 A. Yeah, yeah.

17 Q. Okay.

18 A. Which is how I correspond more than e-mail.

19 Q. Okay. Help me understand that. Because I
20 thought you said just a few minutes ago that you only
21 text rarely about county business.

22 A. I do only text rarely. But when I -- but when I
23 correspond, texting is my -- is my preference on
24 corresponding versus e-mail.

25 Q. Okay. And have you had occasion to text

1 Commissioner Will Conley from time to time concerning
2 45 Southwest?

3 A. Yes.

4 Q. And some of that would have happened before May
5 10th of 2013?

6 A. Yes.

7 Q. Okay. If I could ask you to look at
8 interrogatory number 12, please.

9 A. (Witness reviews document.) Okay.

10 Q. Okay. Having taken a few minutes to review
11 interrogatory number 12 and your lawyer's objection and
12 then your response, would you change that response in any
13 way today?

14 MR. NELSON: Objection, form.

15 A. Yes.

16 Q. (BY MR. BUNCH) Okay. How would you change it?

17 A. I would get you all of the texts, all of the
18 phone log, I mean, to give to you.

19 Q. Okay. Have you made any further efforts, since
20 you filed these responses, to try to obtain those text
21 message records?

22 A. I have.

23 Q. And could you explain that to me?

24 A. The AT&T carrier, who is my carrier, says that
25 those are available but you have to have a subpoena for

1 them. So --

2 Q. And did -- were you told that by an operator on
3 the phone or did you get some letter to that effect?

4 A. Ms. Gessner followed up when she came in with
5 that because I told her -- I said, "I want you to help me
6 gather all that information so that we can give it."

7 Q. Okay.

8 A. And so that's when we were told you can only get
9 that with a subpoena.

10 Q. Okay. And are you willing to assist the
11 plaintiffs in this case to go and get a subpoena issued
12 so that we can get those records?

13 A. Absolutely.

14 Q. Okay. Did Ms. Gessner get any additional
15 information on who exactly to serve or the process for
16 that?

17 A. I don't think so.

18 MR. NELSON: Objection, form. Can we go
19 off the record?

20 MR. BUNCH: Sure.

21 (Discussion off the record)

22 MR. BUNCH: Okay. We're back on the record
23 and there's been some back and forth between counsel.
24 And counsel for Commissioner Daugherty, if I may, has
25 agreed that they'll -- you'll facilitate our efforts and

1 support our efforts for a subpoena to obtain the relevant
2 text messages from Commissioner Daugherty's provider. Is
3 that correct?

4 MR. NELSON: For the record, we requested
5 both verbally and in writing the records for the relevant
6 period that you've asked for, January, when he took
7 office, of 2013 through May of 2013. We have provided
8 those -- that written request in the responses to
9 production.

10 We will facilitate in any way that we need
11 to the response to any subpoena that's issued, provided
12 that we receive a copy of those same texts. Because
13 they're not available to him either at this point. They
14 are only available, as we've been advised by the
15 provider, by subpoena.

16 MR. BUNCH: Okay. Thank you.

17 MR. NELSON: Thank you.

18 Q. (BY MR. BUNCH) Okay. And just to be clear,
19 Commissioner Daugherty, about some of our other
20 discussion just now, as your verification says, you did
21 not personally prepare the -- your answers to the
22 interrogatories. Is that correct?

23 A. Correct.

24 Q. You simply reviewed them and judged them to be
25 accurate and swore to that?

1 A. Correct.

2 Q. Okay. Thank you.

3 And is it correct that for our subsequent
4 information request you are seeking to get your text
5 messages from AT&T without a subpoena? Is that correct?

6 A. I certainly would if there's -- if there's an
7 avenue to get that, I would certainly do that.

8 Q. But you're not aware if that effort has been --

9 A. No.

10 Q. -- undertaken at this time?

11 A. No.

12 Q. Okay. Do you know if there's any process in
13 place for your -- whenever you might undertake county
14 business by text message that it -- that a copy is placed
15 on a county server or somehow indexed by the county?

16 A. I'm not aware of that.

17 Q. Okay. And the same with e-mail. If you
18 undertook county business by your personal e-mail, as far
19 as you know there's not any process in place where that
20 would be documented by the county in its computer system?

21 A. Correct. I don't know.

22 Q. Okay.

23 (Exhibit 4 marked)

24 Q. If you could just review what I've marked as
25 Deposition Exhibit 4.

1 A. (Witness reviews document.)

2 Q. Okay. Commissioner Daugherty, can you identify
3 for us Deposition Exhibit 4?

4 A. Yes.

5 Q. And what is that document?

6 A. As it states, it's Gerald Daugherty's Objections
7 and Responses to Plaintiff's Requests For Production.

8 Q. Could you look, please, at request for
9 production number 4.

10 A. Okay.

11 Q. We're going to pull up the specific page numbers
12 that are referenced in your answer to request for
13 production number 4. But while we do that, I was just
14 wondering, do you know if there's any supplementary
15 documents, before we look at those, that would be
16 responsive?

17 MR. NELSON: Objection, form. These are
18 not his signed verified responses. They're the responses
19 prepared by counsel. They're not prepared by the party
20 nor are they required to be prepared by the party under
21 the rules. You've asked him to identify it. You didn't
22 ask him any other prefatory questions. Objection, form.

23 Q. (BY MR. BUNCH) Can you still please answer the
24 question?

25 A. Would you repeat it, please?

1 Q. Well, let me ask it this way. Are you aware of
2 any supplemental documents that have come in in the last
3 two weeks concerning obtaining records from your cell
4 phone provider?

5 A. I'm not aware of any.

6 Q. If you could look at -- if you could look at
7 request for production number 6.

8 A. Okay.

9 Q. My question is, did -- before Ms. Gessner, did
10 you have a public information coordinator that was
11 designated for your office?

12 A. I don't think I had anyone designated, no.

13 Q. Okay. Was there someone in your office that
14 served that role, even if they weren't officially
15 designated as the public information coordinator?

16 A. Yes. I think that would have been Barbara
17 Smith.

18 Q. Okay. And do you know if she had taken the
19 Public Information Act training course?

20 A. I do not know that.

21 Q. Can you tell me, what is your understanding of
22 your office's records retention policy as it pertains to
23 e-mail correspondence?

24 A. It is my understanding that there is nothing on
25 a computer or a phone or any sort of a device that you

1 can't retrieve. I mean, that's my -- that's my
2 understanding of technology. Now, I can't retrieve it,
3 but I know that there are people that can. And I think
4 that that -- that is how I feel about that, and I think
5 that that's pretty accurate.

6 So there is certainly ways to get it. And
7 quite frankly, that is sort of my -- the policy that I
8 have personally, is that when something comes to the
9 commissioner, whether it's on a phone or whether it's on
10 a computer, that it is retrievable, even when you delete
11 it.

12 Q. Okay. My question, however, is about the policy
13 statement itself. And do you know what the policy
14 statement calls for with regards to e-mail
15 correspondence?

16 A. No.

17 Q. Do you know -- do you remember if that issue was
18 addressed in your -- the online training course that you
19 took?

20 A. Yes. I think it was.

21 Q. But you just don't remember what they indicated
22 about that?

23 A. That you -- that you needed to provide, if it
24 was requested, any sort of documentation and that it --
25 that it was for public knowledge. I absolutely knew that

1 and remembered that from the training.

2 Q. And do you have any idea as to how long you're
3 supposed to retain that information?

4 MR. NELSON: Objection, form.

5 A. No, I don't recall the length of time.

6 Q. (BY MR. BUNCH) Okay. In working on the
7 45 Southwest project this last year you've been in
8 office, have you ever corresponded in any way with Bill
9 Walters about the project?

10 A. No.

11 Q. Have you spoken to Mr. Walters about the
12 project?

13 A. I have.

14 Q. Is there some other representative for
15 Mr. Walters that you would typically communicate with
16 besides Mr. Walters about 45?

17 A. No.

18 Q. But your communications with Mr. Walters about
19 45 Southwest would only be verbally and not any kind of
20 correspondence?

21 A. Yes.

22 MR. NELSON: Can we go off the record for a
23 minute?

24 MR. BUNCH: Sure.

25 (Recess)

1 (Exhibit 5 marked)

2 Q. (BY MR. BUNCH) Commissioner Daugherty, we've
3 taken a brief break and we're back on the record. I have
4 marked for you --

5 MR. NELSON: Hold on for a second.

6 (Discussion off the record)

7 MR. BUNCH: Actually, I didn't want to do
8 that. I don't mean to ask you about the disclosures.
9 It's the requests for admissions --

10 MR. NELSON: So do you want to remove the
11 Exhibit 5 from this?

12 MR. BUNCH: Will it come off?

13 MR. NELSON: I don't know.

14 Q. (BY MR. BUNCH) I don't think we need to ask you
15 about the disclosure. I wanted to go to the admissions.

16 MR. ABRAMS: Here's the amended. The
17 amended is 14 through 16. Is that --

18 MR. NELSON: Correct.

19 MR. ABRAMS: And everything else would be
20 the same.

21 MR. NELSON: Correct.

22 MR. BUNCH: Where's the -- where's the
23 original?

24 (Exhibit 5 re-marked)

25 MR. NELSON: Well, since there's been an

1 amended, the originals are no longer a live pleading. We
2 understand that. Correct?

3 MR. BUNCH: If you want to make an extra
4 copy for us real quick. But it's hard for me to ask him
5 about it --

6 MR. NELSON: Sure. Do you want to --

7 MR. BUNCH: -- without having a copy.

8 MR. NELSON: We are happy to do that. But
9 I would object to any questions regarding a pleading
10 that's no longer the live pleading. Do you want to take
11 a break and get original --

12 MR. BUNCH: I think we're --

13 MR. NELSON: -- additional docs?

14 MR. BUNCH: It's fair game to ask about why
15 all this changed. Why don't we just go off the record
16 for a minute.

17 (Discussion off the record)

18 (Exhibit 6 marked)

19 Q. (BY MR. BUNCH) Commissioner Daugherty, I want
20 to show you what's been marked as Deposition Exhibit 6,
21 which was produced to us, and ask you if you recognize
22 that document.

23 A. I do.

24 Q. Okay. That indicates that Ms. Bray is actually
25 a member of the 45 Southwest committee. Is that correct?

1 A. No.

2 Q. It doesn't list her as a committee member?

3 A. It does list that, but she is not.

4 Q. Okay. That was my question. Is -- to be clear,
5 she is not a member of the committee?

6 A. She is not.

7 Q. And your understanding is her participation in
8 the committee meetings is just as a volunteer?

9 A. Yes.

10 Q. At your request?

11 A. Yes.

12 Q. And do you know if her engineering firm that she
13 works for has a contract with TxDOT or the RMA or anybody
14 who's working on 45 Southwest?

15 A. I don't know that.

16 Q. You don't know if she -- they do or they don't?

17 A. Yeah. I don't know that.

18 Q. Okay.

19 A. Yeah.

20 Q. Okay. Can you tell me, who is Mr. Jim Nuse?

21 A. Nuse? He was the city manager of San Marcos.

22 Q. Okay. And can you recall if there were any
23 developer representatives at any of your 45 Southwest
24 committee meetings?

25 A. Not that I recall.

1 Q. Okay. Are you -- just to be clear, you're not a
2 member of the CTRMA board. Is that correct?

3 A. I am not.

4 Q. Okay. Regarding 45 Southwest, who would be your
5 primary point of contact at the RMA?

6 A. Mike Heiligenstein.

7 Q. And do you know if you have ever corresponded
8 with Mr. Heiligenstein on an e-mail address of his that
9 was other than an official RMA e-mail address?

10 A. No, I have not.

11 Q. You have not or you're -- you don't remember?

12 A. No, I have --

13 Q. You have not?

14 A. I have not.

15 Q. So any time you have corresponded with
16 Mr. Heiligenstein by e-mail, it would be on his official
17 RMA e-mail address?

18 A. Yes.

19 Q. In working on 45 Southwest, who would you say
20 the Hays County representative is that you've been in
21 most contact with?

22 A. Mark Jones.

23 Q. And have you met with or communicated in any way
24 with any representative of the Federal Highway
25 Administration concerning 45 Southwest?

1 A. I have not.

2 Q. Are you aware of any Federal Highway
3 Administration person who would be the contact or
4 relevant party concerning 45 Southwest?

5 A. No.

6 Q. Okay. Have you met with or corresponded with
7 any U.S. Fish and Wildlife Service employee concerning
8 45 Southwest?

9 A. I have not.

10 Q. Okay. Are you aware of any plans or suggestions
11 for placing water lines in the 45 Southwest right-of-way?

12 A. No --

13 MR. NELSON: Objection, form.

14 A. No, I'm not aware of any.

15 Q. (BY MR. BUNCH) Okay. Are you aware of any
16 plans or requests for placing sewer lines in the
17 right-of-way of 45 Southwest?

18 MR. NELSON: Objection, form.

19 A. I'm not.

20 Q. (BY MR. BUNCH) In preparing your responses to
21 our May 2013 information request that's the subject of
22 this lawsuit, did you at that time ask Ms. Narvaiz if she
23 had any records that might be responsive?

24 A. No.

25 Q. And why did you not do that?

1 A. Because I didn't think that she'd have any.

2 Q. She was not working for you on the project at
3 that time?

4 A. She was.

5 Q. But you didn't think she would have any sort of
6 communications that were responsive to the request?

7 A. No.

8 Q. Is Ms. Narvaiz still working for you on the
9 45 Southwest project?

10 A. No.

11 MR. BUNCH: Okay. We've gotten Exhibit 5
12 copied now. Is that correct?

13 MR. NELSON: Yeah. I provided you --

14 MR. BUNCH: Okay.

15 MR. NELSON: Copies for you and Adam.

16 Q. (BY MR. BUNCH) Okay. We're going to go back to
17 what's been marked Deposition Exhibit 5, which are the
18 amended requests -- your amended responses to our
19 requests for admissions that were provided to us by your
20 lawyer just this morning. Are you generally familiar
21 with that document?

22 A. Yes.

23 Q. Okay. If I could ask you to look at your
24 response to request for admission number 3.

25 A. Okay.

1 Q. Would you have any changes or corrections to
2 make to your response to request for admission number 3
3 on the -- your amended responses?

4 MR. NELSON: Objection, form.

5 A. No.

6 Q. (BY MR. BUNCH) Okay. Can you tell me what your
7 understanding of the word -- or the term incidental usage
8 means in your response?

9 A. To me, incidental means that anytime there was
10 anything that had to do with 45 Southwest, that that was
11 subject to you-all being given that. And I think that
12 it's exactly as I stated; the incidental part of what I
13 do with my phone as it relates to 45 Southwest is very
14 small.

15 Q. Okay. When you're in your official county
16 commissioners court meetings, do you have a different
17 computer on the dais with you?

18 A. I have no computer.

19 MR. NELSON: Hold on, hold on. Objection,
20 form.

21 Go ahead.

22 A. I have no computer.

23 Q. (BY MR. BUNCH) On the dais?

24 A. On the dais.

25 Q. Okay. Have you ever corresponded by e-mail or

1 text message with Commissioner Todd concerning
2 45 Southwest?

3 A. Not to my knowledge.

4 Q. Have you corresponded with Commissioner Todd by
5 e-mail or text message on other county business?

6 A. Not that I recall.

7 Q. Okay.

8 MR. BUNCH: If we can go off the record
9 just for a minute.

10 MR. NELSON: Sure.

11 (Discussion off the record)

12 MR. BUNCH: Could you just sort of repeat
13 what you said?

14 MR. NELSON: Sure. The -- today we
15 e-filed, on behalf of our client, Commissioner Gerald
16 Daugherty -- we e-filed amended responses to petitioner's
17 first requests for admissions with respect to admissions
18 numbers 14, 15, and 16.

19 The initial response indicated that there
20 has been an inadvertent oversight by the county
21 attorney's office in providing the exhibits that are
22 referenced in those respective admissions. After
23 additional review in preparation for the depositions, it
24 was determined that there was not an oversight with
25 respect to the county attorney's office in the processing

1 of those exhibits and the producing of those exhibits in
2 response to the May 2013 Public Information Act request.

3 Accordingly, without any further action,
4 review, or intervention by Commissioner Daugherty, we
5 filed amended responses to accurately reflect that there
6 was not -- to delete references to inadvertent oversight
7 by the county attorney's office and to clarify that there
8 was just an inadvertent oversight of those three
9 particular exhibits that were attached to the admission
10 responses but still indicating, as was indicated in the
11 original responses to admissions, that those documents
12 were all provided in response to the November request for
13 admissions in this case.

14 MR. BUNCH: Okay.

15 MR. NELSON: Well, not in this case. I'm
16 sorry. The November request was a separate request that
17 is not a request in this case.

18 MR. BUNCH: Okay. That's very helpful. I
19 appreciate it.

20 Q. (BY MR. BUNCH) Commissioner Daugherty, can --
21 did you undertake some further review of your documents
22 that turned up these additional documents that we're
23 referencing here in request for admission 14, 15, and 16?

24 A. Repeat that, please.

25 Q. Let me restate it and perhaps it will be more

1 clear.

2 A. Okay.

3 Q. So we had asked for these documents, the
4 overall -- you know, your correspondence on 45. You gave
5 us some stuff.

6 A. Uh-huh.

7 Q. We felt like we were entitled to more and that
8 led to this lawsuit.

9 A. Uh-huh.

10 Q. And then parallel to that we filed a second
11 information request. In response to that, we got some
12 additional documents that were in the initial request
13 time frame.

14 A. Okay.

15 Q. So my question to you is, either after we filed
16 the lawsuit or after we filed the second request, did you
17 take some further action that turned up these documents
18 that were responsive to the initial request but had not
19 been provided pursuant to the initial request?

20 A. Yes.

21 Q. Okay. And what was that?

22 MR. NELSON: Objection.

23 A. Just going back to my staff and saying let's
24 scrub, you know, everything. You know, I think we --
25 think that we gave the information, but obviously, I

1 mean, there appears -- or someone thinks that we have
2 not, so let's scrub it and let's see if there are
3 other -- if there's other information that we need to
4 submit. And so that was -- that was the direction.

5 Q. (BY MR. BUNCH) Okay. That's helpful. Thank
6 you.

7 And then you had indicated earlier that
8 some of the e-mails from Keep MoPac Local in particular
9 that you didn't agree with, that you deleted.

10 A. That's right.

11 Q. Okay. Did you make any effort with county staff
12 to try to retrieve those deleted e-mails?

13 A. I personally did not.

14 Q. Do you know if anybody else did?

15 A. I don't know that for a fact.

16 Q. Okay. If they did, you're not aware of it?

17 A. Correct.

18 Q. Other than Bill Walters, are there other
19 developers in the 45 Southwest or 1626 corridor that you
20 have communicated with about 45 Southwest?

21 A. No.

22 Q. He's the only one that comes to mind?

23 A. (Nods head.)

24 MR. NELSON: You have to answer verbally.

25 A. Yes.

1 Q. (BY MR. BUNCH) Okay.

2 THE WITNESS: I forgot about that.

3 Q. (BY MR. BUNCH) Among the Travis County
4 staffmembers who have some role in the 45 Southwest
5 project, who would you say that you are in contact with
6 the most about that project?

7 MR. NELSON: Objection, form.

8 A. Steve Manilla.

9 Q. (BY MR. BUNCH) Okay. And he's the director of
10 the transportation --

11 A. He's the executive -- he is the executive
12 manager of transportation and natural resources with the
13 county.

14 Q. Okay. You're aware that the Toll Road Authority
15 undertook its first phase of a traffic and revenue study.
16 Is that correct?

17 A. I am.

18 Q. And have you seen that study?

19 A. I have.

20 Q. Do you have a copy of that study?

21 A. No.

22 Q. And in what context did you see it?

23 A. I saw it in a written form but did not keep it.

24 Q. So you read it and gave it back to --

25 A. Yes.

1 Q. -- to the RMA representatives?

2 A. Right.

3 Q. And when was that?

4 A. I can't tell you the specific date.

5 Q. Do you have any particular expertise in toll
6 road bonds or municipal bonds?

7 A. Some.

8 Q. Okay. How do you come by that?

9 A. By virtue of been -- having been an elected
10 official and understanding, you know, how they work.

11 Q. Okay. But you don't have any special expertise?

12 A. No.

13 Q. Okay. Can you say roughly when you read that
14 traffic and revenue study?

15 MR. NELSON: Objection, form.

16 A. In the fall of '13 sometime.

17 Q. (BY MR. BUNCH) And do you know if RMA has
18 initiated a second-phase study, traffic and revenue
19 study?

20 A. I do not know that.

21 Q. Have you ever texted to your other commissioners
22 when you're sitting in a commissioners meeting?

23 A. No.

24 MR. BUNCH: If you could just give me a few
25 minutes, I might be done here.

1 (Pause in proceedings)

2 (Exhibit 7 marked)

3 Q. (BY MR. BUNCH) If I could show you,
4 Commissioner Daugherty, what I've had marked as
5 Deposition Exhibit 7 and ask you to identify that
6 document, if you're able.

7 MR. NELSON: Do you have another copy of
8 that or not?

9 MR. BUNCH: I don't. It's got the --

10 MR. NELSON: I've got your --

11 MR. BUNCH: -- your Bates stamp number
12 there so you might have it on your computer there.

13 MR. NELSON: That, I do.

14 A. Yes, I'm familiar with this.

15 Q. (BY MR. BUNCH) Okay. This is an e-mail I
16 believe from Hays Commissioner Will Conley as chair of
17 CAMPO.

18 A. Uh-huh.

19 Q. Is that correct?

20 A. Uh-huh.

21 Q. Concerning the 45 Southwest committee.

22 A. Uh-huh.

23 Q. And he references developing a stakeholder
24 process?

25 A. Uh-huh.

1 Q. Did that ever happen?

2 A. No.

3 Q. Why not?

4 A. Because I didn't think that there was enough
5 information that we had to lead a stakeholder group. I
6 thought that what we needed to do is we needed to try to
7 put together some sort of a direction with this thing
8 before that was done.

9 Q. Okay. You maintain a work calendar on your
10 phone. Is that correct?

11 A. I do.

12 Q. And is that automatically connected and copied
13 on your office computer calendar --

14 A. It is.

15 Q. -- at Travis County?

16 A. It is.

17 Q. Okay. Your lawyers, in asking for attorney
18 general opinion, asked that at least one document be
19 withheld as particularly intimate and embarrassing. Are
20 you generally familiar with that?

21 A. I'm familiar with that, yes.

22 Q. Okay. How many documents were withheld based on
23 that claim of a sort of personal privacy privilege?

24 MR. NELSON: Objection, form.

25 Q. (BY MR. BUNCH) If you know.

1 A. I have no idea.

2 Q. Okay. So it could be one or 20. You don't
3 know?

4 MR. NELSON: Objection, form.

5 A. I don't know.

6 Q. (BY MR. BUNCH) Okay. Do you recall why you or
7 your lawyers may have considered those documents to be
8 intimate and embarrassing personal information that
9 should not be released to the public?

10 MR. NELSON: Objection, form.

11 A. I quite frankly didn't know what they were
12 talking about. So no, I mean, to this day I don't know
13 what supposedly is the embarrassing thing about anything
14 in them.

15 Q. (BY MR. BUNCH) Okay. In retaining Ms. Narvaiz
16 to help you on the 45 Southwest committee, did you ever
17 actually have a contract with her?

18 A. No.

19 Q. Okay. It was just a verbal understanding?

20 A. Yes.

21 Q. At an hourly rate?

22 A. Not to exceed.

23 Q. Right, okay.

24 A. On a monthly basis.

25 Q. Okay. And that was just between you and her,

1 not anybody else was involved. Is that correct?

2 A. No.

3 Q. Okay. What -- tell me what those circumstances
4 were.

5 A. I asked Commissioner Jones if he would split --
6 you know, if he would pay for part of us having Susan be
7 the person to work with us.

8 Q. Okay. And did he do that?

9 A. He hasn't to date.

10 Q. Okay. Has he indicated that he wants to chip
11 in?

12 A. Yes. I mean, he has -- he has made the
13 commitment that he would do that.

14 Q. Okay. And is that half or a quarter or what is
15 it?

16 A. It's a -- it's a quarter.

17 Q. Okay.

18 A. Roughly.

19 Q. And would that be from his campaign coffers or
20 from Hays County funds, if you know?

21 MR. NELSON: Objection, form.

22 A. I don't -- I don't know how that would come from
23 him.

24 Q. (BY MR. BUNCH) Okay. Prior to taking office at
25 Travis County, you were employed at LCRA. Is that

1 correct?

2 A. I've never been employed by LCRA. My wife has
3 been.

4 Q. Your wife. Okay.

5 And what does she do at LCRA?

6 A. She's no longer at LCRA.

7 Q. Okay. What did she do at LCRA?

8 A. She was a -- she's a process improvement
9 specialist, so she went to work for them and worked in
10 several departments.

11 Q. Okay. And she recently retired or --

12 A. She retired -- she retired two years ago.

13 Q. Okay. Prior to taking office in January 2013,
14 were you ever paid in any way by parties supporting
15 45 Southwest construction?

16 A. I wish. No.

17 MR. NELSON: Objection, form.

18 A. No.

19 Q. (BY MR. BUNCH) Okay. You never did any
20 consulting for Mr. Walters?

21 A. No.

22 Q. Have you ever had a discussion with Ms. Narvaiz
23 about her correspondence concerning 45 Southwest and
24 whether that was public information or not public
25 information?

1 MR. NELSON: Objection, form.

2 A. Once.

3 Q. (BY MR. BUNCH) And what do you recall about
4 that conversation?

5 A. I told her that the AG's opinion had -- that we
6 didn't have to disclose our conversation that we had
7 about her father dying and that that was -- so that
8 that's -- and I asked her, "Susan, do you mind if that's
9 disclosed?" Because that was our conversation. It was a
10 personal conversation. I said, "Do you mind if I ask my
11 attorneys to say -- give them whatever they want?" So
12 that's frankly the only conversation that I had with
13 Susan about that.

14 Q. Okay.

15 A. And she said, "That's fine with me."

16 Q. But you -- did you ever ask her to provide you
17 correspondence that she may have had serving as the
18 facilitator for your commission that didn't actually come
19 to you?

20 A. I think that -- no. I think that any -- no.

21 Q. Okay.

22 MR. BUNCH: Pass the witness.

23 MR. NELSON: Can we take a little break?

24 MR. BUNCH: Sure.

25 (Recess)

1 MR. NELSON: Okay. We're back on the
2 record.

3 EXAMINATION

4 BY MR. NELSON:

5 Q. Commissioner, I've got a couple of, I think,
6 relatively quick questions for you in connection with the
7 testimony that you've given in this matter.

8 Do you recall earlier that Mr. Bunch asked
9 you some questions regarding the southwest -- I'm
10 sorry -- State Highway 45 committee or subcommittee?

11 A. Yes.

12 Q. Okay. And he asked you regarding whether any
13 votes were taken. Do you recall that?

14 A. I do.

15 Q. Okay. To your understanding does the
16 subcommittee have any authority other than to make
17 recommendations?

18 A. No.

19 Q. To CAMPO?

20 A. No.

21 Q. So there are no votes taken at -- the
22 subcommittee cannot act -- or the committee, whichever
23 you want to call it, cannot act outside of the CAMPO
24 board taking an action?

25 MR. BUNCH: Objection, form.

1 A. No.

2 Q. (BY MR. NELSON) All right. You used the term,
3 in response to -- I believe it was questions regarding
4 what additional efforts were made by you to provide
5 information in response to the subsequent public
6 information request, you used the term scrub it. What
7 did you mean by that term?

8 A. Go in and, in more detail, determine whether
9 there was anything that we missed.

10 Q. Okay. So to look further?

11 A. Uh-huh.

12 Q. And check again. Is that essentially what
13 you're saying?

14 A. Yes.

15 Q. With respect to the discovery responses that
16 have been submitted to counsel in this case, did you
17 actually physically prepare the responses that have been
18 filed in this case?

19 A. I did not.

20 Q. Okay. With respect to the interrogatories, you
21 reviewed those interrogatory responses?

22 A. That's correct.

23 Q. And you reviewed them for accuracy?

24 A. Yes.

25 Q. Okay. And you signed a verification page. Is

1 that right?

2 A. I did.

3 MR. NELSON: I'll pass the witness.

4 MR. BUNCH: No further questions. Thank
5 you, Commissioner.

6 THE WITNESS: Yeah, thank you, Bill.

7 (DEPOSITION ADJOURNED)

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SIGNATURE

I have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted on the previous page.

GERALD THOMAS DAUGHERTY

STATE OF _____

COUNTY OF _____

Before me, _____, on this day personally appears GERALD THOMAS DAUGHERTY, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2014.

NOTARY PUBLIC IN AND FOR
THE STATE OF _____

COMMISSION EXPIRES: _____

1 CAUSE NO. D-1-GN-13-003876

2 SAVE OUR SPRINGS ALLIANCE, § IN THE DISTRICT COURT
INC. §

3 §

4 Plaintiff, §

5 V. § 53RD JUDICIAL DISTRICT

6 GERALD DAUGHERTY §

7 In His Official Capacity as §
Travis County Commissioner §
for Precinct 3 §

8 Defendant. § TRAVIS COUNTY, TEXAS

9

10 REPORTER'S CERTIFICATION

11 ORAL DEPOSITION OF GERALD THOMAS DAUGHERTY

12 FEBRUARY 20, 2014

13 I, Shelly M. Tucker, RPR, CRR, Certified

14 Shorthand Reporter in and for the State of Texas, hereby

15 certify to the following:

16 That the witness, GERALD THOMAS DAUGHERTY, was

17 duly sworn by the officer and that the transcript of the

18 oral deposition is a true record of the testimony given

19 by the witness;

20 That the deposition transcript was submitted on

21 February _____, 2014 to the witness or to the attorney

22 for the witness for examination, signature and return to

23 me by March _____, 2014.

24 That the amount of time used by each party at

25 the deposition is as follows:

1 Mr. Bunch - 2 hours, 5 minutes
2 Mr. Nelson - 3 minutes

3 That pursuant to information given to the
4 deposition officer at the time said testimony was taken,
5 the following includes counsel for all parties of record:

6 FOR THE PLAINTIFF:

7 MR. WILLIAM G. BUNCH
8 MR. ADAM R. ABRAMS
9 SAVE OUR SPRINGS ALLIANCE, INC.
10 905 West Oltorf, Suite A
11 Austin, Texas 78704
12 Telephone: 512-477-2320
13 Fax: 512-477-6410
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15 adam@sosalliance.org

16 FOR THE DEFENDANT:

17 MR. ANTHONY J. NELSON
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25 andrew.williams@co.travis.tx.us

26 I further certify that I am neither counsel for,
27 related to, nor employed by any of the parties or
28 attorneys in the action in which this proceeding was
29 taken, and further that I am not financially or otherwise
30 interested in the outcome of the action.

31 Further certification requirements pursuant to
32 Rule 203 of TRCP will be certified to after they have

1 occurred.

2 Certified to by me this _____ day of February,
3 2014.

4

5

6

SHELLY M. TUCKER, RPR, CRR
Texas CSR 4419
Expires 12/31/14
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Austin, Texas 78701
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1 FURTHER CERTIFICATION PURSUANT TO RULE 203

2 The original deposition was/was not returned to
3 the deposition officer on _____;

4 If returned, the attached Changes and
5 Corrections page contains any changes and the reasons
6 therefor;

7 If returned, the original deposition was
8 delivered to Mr. William G. Bunch, Custodial Attorney;

9 That \$_____ is the deposition officer's
10 charges to the Plaintiff for preparing the original
11 deposition transcript and any copies of exhibits;

12 That the deposition was delivered in accordance
13 with Rule 203.3, and that a copy of this certificate was
14 served on all parties shown herein and filed with the
15 Clerk.

16 Certified to by me this _____ day of
17 _____, 2014.

18

19

20

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