

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

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

RESPONDENT'S PLEA TO THE JURISDICTION

COMES NOW, Respondent, the Honorable Gerald Daugherty, in his official capacity as Travis County Precinct Three Commissioner (hereinafter "Respondent" and/or "Daugherty"), by and through his undersigned attorneys of record, and hereby files Respondent's Plea to the Jurisdiction. In support thereof, Respondent would show as follows:

I.
STATEMENT OF THE CASE

Plaintiff filed a Petition for Writ of Mandamus on November 12, 2013. *See Attach. A*, Plaintiff's Original Petition. Respondent waived citation of service on November 21, 2013.

In its Petition, Plaintiff alleges that on May 10, 2013, Save Our Springs Alliance, Inc. (hereinafter "Plaintiff" or "SOSA") made a request pursuant to the Texas Public Information Act ("TPIA"), Tex. Gov. Code §552.001, *et seq.*, for "all correspondence from or to you or your identified executive assistants since you took office in January 2012 to the present, that references the proposed SH 45 SW, the Manchaca Expressway, or other name for a proposed road or toll road along the SH 45 SW alignment or any part of such alignment" (hereinafter referred to as "May 10, 2013 PIR" or "PIR"). *See Attach. A, Ex. A*. It should be noted that the original PIR and the information sought thereunder predated the September 1, 2013 effective date of the Texas Legislature's amendment of the definition of "Public Information" under the

TPIA to apply to and include “any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.”¹

Respondent gathered and reviewed documents that were potentially responsive to the PIR. Respondent, by and through his attorney, determined that some of the requested documents fell within the exceptions to disclosure set forth in Sections 552.101 through 552.153 of the TPIA. On or about May 24, 2013, Daugherty, by and through Assistant Travis County Attorney Elizabeth Winn (“ACA Winn”), requested a letter ruling from the Texas Attorney General’s Office (“OAG”) under the TPIA. *See Attach. B*, 5/24/13 ACA Winn Letter Request for OAG Open Records Opinion. On May 28, 2013, Respondent emailed Plaintiff all documents responsive to the PIR that did not fall within the documents that were submitted to the Attorney General for review as being excepted from disclosure under the TPIA. *See Attach. C*, 5/28/13 ACA Winn Letter to B. Bunch re: PIR- Partial Responsive Information. On May 30, 2013 ACA Winn submitted a Supplemental Brief to the OAG in connection with the May 24, 2013 Request for Ruling on the PIR. *See Attach. A, Ex. B*.

On July 30, 2013, the OAG issued Open Records Letter Ruling OR2013-13139. *See Attach. A, Ex. C*, pgs. 5-6. The OAG’s opinion sustained certain exceptions asserted by Respondent, while denying, in part, others. *Id.* On August 6, 2013, through ACA Winn, Respondent released the remainder of the information in accordance with Open Records Letter Ruling OR 2013-13139. *See Attach. D*, 8/6/13 ACA Winn e-mail to B. Bunch re: release of additional documentation pursuant to OR2013-13139. The only information withheld in the August 6, 2013 release was information the OAG had opined fell within exceptions to disclosure asserted by Respondent pursuant to the TPIA.

¹ See Tex. Gov’t Code § 552.002(a-2) Amended by: Acts 2013, 83rd Leg., R.S., Ch. 1204 (S.B. 1368), Sec. 1, eff. September 1, 2013.

On November 12, 2013, Plaintiff filed this mandamus action against Commissioner Daugherty in his official capacity. In its original petition SOSA contended Respondent only provided the attorney general with a sample of the requested documentation, and failed to produce responsive emails and text messages from his personal email and cell phone accounts, and those of his staff. Plaintiff also contended OR 2013-13139 misapplied certain exemptions under the Act. *See **Attach. A***, Plaintiff's Original Petition at 6-9. Plaintiff's Original Petition was accompanied by discovery requests in the form of interrogatories, request for production and request for admissions.

Commissioner Daugherty timely filed his Original Answer and Response to Writ of Mandamus on December 13, 2013. Therein Respondent denied Plaintiff had stated any basis for Mandamus relief under the TPIA. Respondent also filed timely responses to Plaintiff's discovery requests.

Discovery continued in the case. Plaintiff has deposed Commissioner Daugherty, his Executive Assistant Bob Moore, former Executive Assistant Barbara Smith, Travis County Representatives John Stark and Shawn Malone, non-county employees Suzan Narvaiz and Rebecca Bray², and Lone Star Paralysis Foundation Corporate Representative Michael Haynes.³ The last deposition conducted in this matter was taken on September 3, 2014. No depositions have been requested or taken since that date.

In addition, Respondent has responded to Plaintiff's Second Request for Production and Second Set of Interrogatories; Request for Privilege Log; and served Plaintiff with Amended Response to Request for Admissions, as well as supplemental responses to Plaintiff's First and Second Request for Production. It should be noted that in his supplemental responses to Plaintiff First and Second Request for Production Respondent produced additional documents that had

² Narvaiz and Bray were not employees of Travis County, but had worked with Respondent on the SH 45 SW project.

³ Lone Star Paralysis Foundation received the donation of Daugherty's spouse's former home computer. Commissioner Gerald Daugherty's Original Answer and Response to Writ of Mandamus 327715-2 212.38
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previously been withheld or redacted under the OAG's ruling in OR 2013-13139. Respondent also produced in the supplemental responses email documents that provided certain email addresses that had previously been redacted, as well as providing email documents in a format that allowed Plaintiff to view email addresses of the sender/recipient that could not be viewed in the previous format the document had been produced. *See* Deposition of John Stark at 4-6.

On June 18, 2014, Plaintiff filed its First Amended Original Petition. The First Amended Original Petition purports to add a cause of action under Chapter 201 of the Texas Local Government Records Act ("LGRA"), alleging Respondent violated the Act by failing to retain public information created on the personal accounts of Respondent and/or his staff pertaining to SH 45 SW. *See* Plaintiff's First Amended Original Petition at 6-7, 9.

On September 19, 2014, Plaintiff filed its Second Amended Original Petition. The Second Amended Original Petition purports to add claims for injunctive and declaratory relief. Plaintiff requests the Court to declare Respondent violated state law, and direct Respondent to "produce all text messages, emails and electronic information that falls within the scope of the [PIR]." *See* Plaintiff's Second Amended Original Petition at 10-11. Plaintiff further requests the Court to issue an injunction prohibiting Respondent from using private devices or accounts to conduct Travis County business until such time as it can be demonstrated that "proper retention procedures are in place", and precluding Respondent from deleting public information in violation of the applicable records retention schedule. *See* Plaintiff's Second Amended Original Petition at 10-11.

In October 2014, Plaintiff issued a subpoena to AT&T for Commissioner Daugherty's cell phone billing records for the period from January 1, 2013 through November 3, 2013. Consistent with the agreement of counsel reached during the taking of his deposition, Commissioner Daugherty took no action to resist or contest the subpoena.

No discovery is outstanding. No pleadings have been filed nor has any discovery occurred since the October 2014 issuance of the subpoena for Commissioner Daugherty's cell phone billing records.

On March 17, 2015, Commissioner Daugherty submitted an Agenda Request for the March 24, 2015 Travis County Commissioners Court Agenda proposing the adoption of Chapter 42 of the Travis County Code, County Records. Subchapter B of Chapter 42 provides procedures which require Travis County employees to use county devices or accounts wherever feasible to conduct County business, and further provides that if circumstances require a County employee to use a personal device or account to conduct County business they are required to forward the information to a County account if it is information that is required to be retained under the Records Retention Period applicable to such County records as determined by the County's Local Government Records Management Officer.

On Commissioner Daugherty's motion for approval following presentation of Chapter 42, County Records during the Open Session of its March 24th meeting, the Commissioners Court voted and adopted Chapter 42, County Records, which became effective upon adoption. *See **Attach. E***, Travis County Code, Chapter 42, County Records.

On March 23, 2015, prior to the Commissioners Court's consideration of the proposed Chapter 42, County Records, Commissioner Daugherty adopted the Travis County Precinct 3 Commissioner's Office Electronic Communication Devices Policy. Travis County Precinct 3 Commissioner's Office Electronic Communication Devices Policy places the same general requirements set forth in 'Travis County Code Chapter 42, County Records' on Commissioner Daugherty's office. *See **Attach. F***, Travis County Precinct 3 Commissioner's Office Electronic Communication Devices Policy.

Based upon the evidence and the authorities set forth herein, Respondent now files his Plea to the Jurisdiction.

II. SUMMARY OF THE ARGUMENT

Respondent's Plea to the Jurisdiction should be granted because Plaintiff fails to meet the statutory requirements for mandamus relief under the Texas Public Information Act. Section 552.321(a) of the Act sets out three scenarios under which the Attorney General or a requestor is entitled to file suit for mandamus relief. First, if a governmental body fails to request an Attorney General decision in the time permitted, the information is presumed to be open to public disclosure, and the governmental body must release the information. *See id.* § 552.321(a). Second, if the Attorney General has rendered a decision and the governmental body has failed to comply with the decision, the Attorney General or the requestor may then file suit. *See id.* Finally, either the Attorney General or the requestor may file suit, if the governmental body "refuses to supply public information." *Id.*

The evidence before this Court will demonstrate it is undisputed Respondent made a timely request for an attorney general opinion, and will further demonstrate Respondent produced all documentation as required by the OAG opinion. Thus, Plaintiff is not entitled to relief under the "failed to make timely request", or "failed to produce items determined [to be] public information" by the OAG under Section 552.321(a) of the Act. Accordingly, Plaintiff is left with attempting to show Respondent "refuses to supply public information" within the meaning of Section 552.321(a). Respondent submits the evidence before this Court conclusively demonstrates that through the TPIA response process, combined with Respondent's voluntary responses to discovery in this lawsuit Respondent has produced any and all information in his possession, or in the possession of

his office that is responsive to the PIR. Accordingly, this Court is deprived of jurisdiction over Plaintiff's "refusal to supply public information" claims under the mootness doctrine.

To the extent Plaintiff attempts to assert a mandamus action against Respondent in his official capacity under the LGRA, Plaintiff's claims are barred because the LGRA does not provide Plaintiff a cause of action for mandamus relief that falls within the narrow waiver of official immunity created by the Legislature. Even assuming *arguendo* the documents and information at issue are "public records" within the meaning of LGRA, Chapters 201 and 202 of the Act do not create a private cause of action for mandamus relief. Accordingly, Plaintiff's claims for relief under the LGRA are barred by immunity.

Last, to the extent any claim for declaratory or injunctive relief has not been mooted by Respondent's voluntary production of any and all responsive public information in possession of Respondent or his office, such claims are mooted by Travis County and the Travis County Precinct 3 Commissioner's Office adoption of policies restricting the use of personal electronic communication devices and personal accounts to conduct County business, and requiring the forwarding and retention of any public information created or stored on a personal device or account to a County account for retention in accordance with applicable state required retention schedules. Accordingly, Plaintiff's claims for declaratory and/or injunctive relief under Section 552.3215 of the TPIA are barred as moot.

III.

PLEAS TO THE JURISDICTION

A. Pleas to the Jurisdiction Generally

The purpose of a plea to the jurisdiction is to dismiss a cause of action without regard to whether the claim has merit. *Bland ISD v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). The court must decide whether plaintiff has affirmatively demonstrated the court's jurisdiction to hear this suit,

based on the facts alleged by plaintiff and, when necessary to resolve jurisdictional facts, on evidence submitted by the parties. *See Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227 (Tex. 2004); *Bland ISD*, 34 S.W.3d at 555; *see e.g., State v. Sledge*, 36 S.W.3d 152, 155 (Tex. App.—Houston [1st Dist.] 2000, pet. denied).

The existence of subject matter jurisdiction is a question of law. *State Dep't of Highways & Pub. Transp. v. Gonzalez*, 82 S.W.3d 322, 327 (Tex. 2002). When a plea to the jurisdiction challenges the existence of jurisdictional facts, the trial court must consider relevant evidence submitted by the parties. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004). If the evidence creates a fact question regarding jurisdiction, the trial court cannot grant the plea to the jurisdiction, and the fact issue will be resolved by the fact-finder; however, if the relevant evidence is undisputed or fails to raise a fact question on the jurisdictional issue, the trial court rules on the plea as a matter of law. *Id.* at 227-28. *See also, City of El Paso v. Abbott*, 444 S.W.3d 315, 320 (Tex. App. – Austin 2014, pet. filed).

In deciding a plea to the jurisdiction, a court may not consider the merits of the case, but only the plaintiff's pleadings and the evidence pertinent to the jurisdictional inquiry. *County of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002). The Court must take as true all evidence favorable to the nonmovant and indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Miranda*, 133 S.W.3d at 228.

B. Plea to Jurisdiction Based on Mootness

“A case becomes moot if a controversy ceases to exist or the parties lack a legally cognizable interest in the outcome.” *Allstate Ins. Co. v. Hallman*, 159 S.W.3d 640, 642 (Tex. 2005). “Mootness is a component of subject-matter jurisdiction.” *Krohn v. Marcus Cable Assocs., L.P.*, 201 S.W.3d 876, 882 (Tex. App.—Waco 2006, pet denied) (quoting *Labrado v. County of El Paso*, 132 S.W.3d 581, 589 (Tex. App.—El Paso 2004, no pet.). “The mootness doctrine

dictates that a court avoids rendering an advisory opinion by only deciding an issue that presents a ‘live’ controversy at the time of the decision.” *City of Richardson v. Gordon*, 316 S.W.3d 758, 761 (Tex. App.—Dallas 2010, no pet.).

1. Mootness of TPIA Mandamus Action as Result of Entity’s Voluntary Compliance.

Likewise, with regard to Plaintiff’s mandamus action, when a governmental entity voluntarily provides all documents in its possession related to a TPIA request, the scope of the mandamus action for which immunity from suit is waived comes to an end. The court loses subject matter jurisdiction. *See City of El Paso v. Abbott*, 444 S.W.3d 315, 323-325 (Tex. App. – Austin 2014, 2014, pet filed); *See also, Tex. State Board of Veterinary Medical Examiners v. Gigglesman*, 408 S.W.3d 696, 704 (Tex. App.—Austin, 2013 no pet.) (“In fact, Gigglesman’s mandamus claim was rendered moot before final judgment when the Board had eventually produced the disputed exhibits to him, obviating any justiciable controversy regarding his entitlement to the writ.”); *see also, Speer v. Presbyterian Children’s Home and Serv. Agency*, 847 S.W.2d 227, 229 (Tex. 1993)(dismissing case as moot, including pending claim for attorney’s fees, because the action sought to be enjoined have been accomplished and “suitable coercive relief” became impossible); *Gattis v. Duty*, 349 S.W.3d 193, 202 (Tex. App—Austin, 2011, no pet.) (noting that when the claim became moot, the district court lost subject matter jurisdiction over the claim).

The *City of El Paso* case is very instructive to the case at bar. In *City of El Paso*, Stephanie Allala made a TPIA request to the City of El Paso for communications regarding City business between the mayor, council representatives, the city manager, or any combination thereof, including any such communications conducted on their personal email accounts. *Id.* at 317-318. As was the case here, Allala’s request predated the Legislature’s amendment of the definition of “Public Information” to include information from, or stored on any device or account, whether

owned by the governmental entity or not, so long as the information pertained to conducting of the public's business.

In response, El Paso requested an Attorney General opinion under the TPIA. When the OAG ruled the information requested was public, El Paso filed suit under the Act, challenging, *inter alia*, whether private emails were public information within the meaning of the Act. *Id.* at 318. Allala intervened, seeking a writ of mandamus ordering El Paso to disclose all of the public information she requested. Allala sought mandamus under Section 552.321(a) of the Act for refusal to provide public information. *Id.* A key distinction from the facts here, however, is that Allala had an OAG opinion that actually ordered El Paso to turn over the information in question as public information that was not exempt from disclosure that the El Paso had filed suit seeking to avoid compliance with the opinion.

During the pendency of the City's declaratory-judgment action, the legislature amended the PIA's definition of "Public Information". Thereafter, the city elected to dismiss its suit against the OAG and turned over what El Paso contended was all of the responsive information it had. *Id.* at 319. After having done so, El Paso filed a plea to the jurisdiction, seeking to have Allala's mandamus action dismissed as moot, depriving the court of jurisdiction. *Id.*

In support of its motion, El Paso offered affidavit testimony demonstrating the exhaustive steps the El Paso took to locate all responsive matters it had in its possession and turned them over to Allala. El Paso's evidence included affidavit testimony from its representatives and agents involved in the process of gathering responsive information, and detailed explanation of the steps taken to do so. *Id.*

El Paso sought dismissal for want of jurisdiction on three grounds:

- Voluntarily turning over all responsive information the city had possession of mooted all claims related to the underlying PIA action;

- Sovereign immunity deprived the trial court of jurisdiction once the City “establishe[d] by jurisdictional evidence that [the City] ha[d] complied, to the extent of its ability,” with the attorney general’s decision; and,
- A relator is precluded from prosecuting a mandamus action brought under the PIA when evidence conclusively negates the City was “refusing to supply public information or information that the attorney general has determined is public information.”

Id. at 320.

After reviewing all of the evidence submitted in support of, and challenging El Paso’s plea, the Austin Court of Appeals reversed the trial court and found in favor of El Paso, finding the city’s evidence was “sufficient to conclusively establish that the City was not “refusing to supply public information that the attorney general has determined is public information.” *Id.* at 324. In so ruling the Court held:

By its plain terms, the PIA’s waiver of sovereign immunity for mandamus requires that the City be “refusing” to supply public information —here, the private emails of others. “Refuse” in this context means to “show or express a positive unwillingness to do or comply with.” *Webster’s Third New Int’l Dictionary* 1910 (2002) (defining verb “refuse”); . . . By comparison, the transitive form of the verb “fail,” which the legislature has used, in similar contexts, by itself, *see, e.g., Tex. Occ. Code § 2051.457* (“fails to pay”), or in conjunction with “refuse,” *see, e.g., Tex. Nat. Res. Code § 134.173* (“violates, fails, or refuses to comply”), means “to omit to perform” or “to leave undone.” [Citation omitted.] Thus, under the plain language of *section 552.321*’s waiver of sovereign immunity, a requestor must show that the governmental body is “unwilling” to supply public information. *See Tex. Gov’t Code § 552.321; City of Rockwall, 246 S.W.3d at 625-26* (asserting that courts should “rely on the plain meaning of the words, unless a different meaning is supplied by legislative definition or is apparent from context, or unless such a construction leads to ‘absurd results’”); *Tex. Gov’t Code § 311.011* (“Words and phrases shall be read in context and construed according to the rules of grammar and common usage,” but “[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.”).

Id. The Court went on to conclude “the City’s jurisdictional evidence conclusively established that it was willing to supply the requested information and, to the extent that it located it or received it from the individuals named in the request, it actually had done so. Accordingly, the

City asserted and supported with evidence that the trial court lacked subject-matter jurisdiction. *See Miranda*, 133 S.W.3d at 228.

Examination of Respondent's evidence in this case reveals the same conclusion should be reached in this case. In support of his Plea, Respondent submits his affidavit, as well as the affidavits of his staff at the time the PIR in question was received (Executive Assistants Bob Moore, Martin Zamzow and (now retired Executive Assistant) Barbara Smith). The affidavits of Commissioner Daugherty and his staff demonstrate the following:

- The PIR was received by email by Barbara Smith, Daugherty's Executive Assistant at the time who served as his office manager and administrative assistant. Amongst Smith's duties were to monitor and organize Daugherty's emails, and to bring correspondence that required action to Daugherty's attention. *See* Affidavit of Gerald Daugherty at 1, ¶ 1; Affidavit of Barbara Smith at 1-2, ¶¶ 3-7; Affidavit of Bob Moore at 2, ¶ 6; Affidavit of Martin Zamzow at 2, ¶ 6.
- After the May 10th PIR was received Daugherty directed his staff to gather whatever information they had in their files that might be responsive, and get it to Barbara [Smith] to be provided to the County Attorney's Office for review in connection with responding to the May 10th PIR. *See* Affidavit of Gerald Daugherty at 1, ¶ 2; Affidavit of Barbara Smith at 2, ¶ 8; Affidavit of Bob Moore at 2, ¶ 7; Affidavit of Martin Zamzow at 2, ¶ 7.
- Smith searched Daugherty's office files, Travis County-assigned office desktop computer, and Travis County email account that she organized and maintained for him, as well as the Travis County desktop computer and email account assigned to her, and all of the office files she maintained. *See* Affidavit of Gerald Daugherty at 2, ¶ 3; Affidavit of Barbara Smith at 2, ¶ 8.
- Executive Assistants, Bob Moore and Martin Zamzow searched their assigned Travis County desktop computers and email accounts, and any files they maintained. *See* Affidavit of Gerald Daugherty at 2, ¶ 3; Affidavit of Barbara Smith at 2, ¶ 8; Affidavit of Bob Moore at 2, ¶ 7; Affidavit of Martin Zamzow at 2, ¶ 7.
- Daugherty searched his home computer for any information that he had that was responsive to the May 10th PIR, and forwarded any responsive information found to Ms. Smith for inclusion. It was rare for Daugherty to use his home computer to conduct County business. Generally when he did so it was his practice to forward the information to Ms. Smith's county email or his county email for her to handle." *See* Affidavit of Gerald Daugherty at 2, ¶ 3; Affidavit of Barbara Smith at 2, ¶ 8.

- When PIRs are received seeking information relating to Pct. 3 or other Travis County business, a member of Daugherty’s staff notifies the Travis County Attorney Office (“TCAO”) of the request, then the office gathers whatever information it has that might be responsive to the request, and provides it to the TCAO for review and consideration in preparing a response to the PIR. This procedure was followed for the May 10th PIR. *See* Affidavit of Gerald Daugherty at 2, ¶¶ 4-5; Affidavit of Barbara Smith at 3, ¶¶ 11-12; Affidavit of Bob Moore at 3, ¶ 12-13; Affidavit of Martin Zamzow at 2, ¶ 10-11.
- Daugherty and his staff repeated this process in response to Plaintiff’s November 13th PIR, as well as in assisting Assistant County Attorney Nelson and his paralegal, Amy Pollock respond to discovery. *See* Affidavit of Gerald Daugherty, *passim*; Affidavit of Barbara Smith, *passim*; Affidavit of Bob Moore, *passim*; Affidavit of Martin Zamzow, *passim*.
- Daugherty searched his cell phone for text messages responsive to the May 10th PIR, and found none. Daugherty did not resist or contest Plaintiff’s subpoena for his AT&T cell phone billing records for the period in question. *See* Affidavit of Gerald Daugherty at 3, ¶ 15; p.4; ¶ 20.
- Smith did not use her personal email to conduct Travis County business. Smith provided Plaintiff’s counsel with screen shots of her cell phone text messages at her deposition in this case. None of them pertained to the May 10th PIR. Smith rarely texted Daugherty about substantive County business. Generally her only texts were about general scheduling matters, e.g., he has an appointment, he is late for an appointment, his scheduled appointment is running late. *See* Affidavit of Barbara Smith at 2-3, ¶¶ 9-10.
- Moore did not use his personal email to conduct Travis County business. Moore rarely texted anyone about substantive County business. Generally his only texts were about general scheduling matters. Moore does not recall ever texting anyone about SH 45 SW, the subject matter of the May 10th PIR. After being served with discovery in the lawsuit Moore inquired with his cell carrier regarding the availability of his text messages for the period requested. Moore was advised that the content of the text for the period requested was not available. *See* Affidavit of Bob Moore at 2-3, ¶¶ 8-11.⁴
- Zamzow does not use his personal email to conduct Travis County business. Zamzow’s cell phone does not have texting service. *See* Affidavit of Martin Zamzow at 2, ¶¶ 8-9.⁵

⁴ Moore’s cell phone billing records for the period in question were provided in Respondent’s Responses to Plaintiff’s First Request for Production. *See* Bates Stamp Nos 2120063 through 2120086.

⁵ Zamzow’s cell phone billing records for the period in question were provided in Respondent’s Responses to Plaintiff’s First Request for Production. *See* Bates Stamp Nos 2120087 through 2120149.

- In response to the May 10th PIR Daugherty's counsel requested an Attorney General ("OAG") Opinion. Daugherty's counsel provided some documentation to Plaintiff prior to the OAG opinion, and provided all additional documentation in the manner and format directed by the OAG in its opinion. It was Daugherty's understanding that his counsel fully complied with the OAG opinion. *See* Affidavit of Gerald Daugherty at 2, ¶ 6.
- After the lawsuit was filed a litigation hold was put in place. In gathering information responsive to discovery request served in the lawsuit Daugherty authorized Travis County Information Technology Services Department to run electronic searches on the electronic mailboxes for Daugherty and his staff maintained on the Travis County email server. Responsive documents located were produced in discovery. *See* Affidavit of Gerald Daugherty at 3, ¶¶ 9-10. *See also*, Affidavits of Amy Pollock and Frank Trevino.
- During the course of discovery in the case Daugherty specifically authorized his attorney to release in unredacted format documents that Daugherty had been authorized to withhold and/or redact under the OAG opinion. These documents were specifically identified in Respondent's Privilege Log. *See* Affidavit of Gerald Daugherty at 4, ¶¶ 18-19. *See also*, Affidavit of Amy Pollock.
- Daugherty, Moore, Zamzow, and Smith each testify respectively that to the best of their knowledge, information and belief, they have produced any and all documentation in their custody or control that they have access to that is responsive to SOSA's May 10th PIR, regardless of whether the information was on a Travis County device, or a personal device used while conducting County business relating to SH 45 SW. *See* Affidavit of Gerald Daugherty at 5, ¶ 24; Affidavit of Barbara Smith at 3, ¶ 16; Affidavit of Bob Moore at 3-4, ¶ 17; Affidavit of Martin Zamzow at 3, ¶ 15.

See **Attach. G**, Affidavits of Commissioner Gerald Daugherty, Executive Assistants Bob Moore, Martin Zamzow and (former Executive Assistant) Barbara Smith.

In addition to the testimony set forth in the affidavits of Commissioner Daugherty and his staff, Respondent attaches the affidavits of Travis County Attorney Litigation Paralegal Amy Pollock and Travis County Information Technology Services ("ITS") Systems Engineer III Frank Trevino. Pollock's affidavit sets forth in detail the steps she took, as well as the categories and quantity of documents she reviewed in assisting in preparing responses to discovery requests in this case, including but not limited to Responses to Requests for Production and preparation of a Privilege Log, which also identified documents that had previously been withheld or produced in redacted form that were subsequently released in unredacted format pursuant to Commissioner

Daugherty's authorization and directive. *See* **Attach. H**, Affidavit of Amy Pollock, *passim*. Trevino's affidavit details the procedures and process for formulating and conducting the searches on the electronic mailboxes for Daugherty and his staff maintained on the Travis County email server. *See* Affidavit of Frank Trevino, *passim*. Trevino further testifies in his affidavit that the searches he conducted "include[d] all email in the user's mailbox, no matter what folder it was stored in. It would include the "sent", "inbox", "draft" and "deleted items" folders, as well as custom named folders in the mail box the user created. With respect to the "deleted items" folder it would also include emails that the user had deleted from other locations within the mailbox, so long as the user had not emptied the "deleted items" folder on their mailbox. If the deleted items folder is not emptied, Travis County's Exchange servers are setup to store these items indefinitely, or until space runs out." *See* **Attach. I**, Affidavit of Frank Trevino at 2, ¶ 4. Trevino also testifies in his affidavit that "as a System Administrator [he] can place an electronic litigation hold on a user's mailbox. The electronic litigation hold prevents the user from being able to delete emails from being stored on the server. While it appears to the user that the email has been deleted, the litigation hold maintains the email on the storage solution (SAN). At the time of the searches conducted on the Exchange mailboxes of Commissioner Daugherty and his staff, each of these mailboxes had, and continues to have a litigation hold in place." *Id.*

In addition to the affidavit testimony of Commissioner Daugherty and his staff, Paralegal Pollock and ITS Systems Engineer III Trevino; Plaintiff has requested and taken the depositions of Daugherty, Smith, and Moore; Travis County employees John Stark and Shawn Malone (as County representatives on IT and record retention issues, respectively); Suzan Narvaiz and Rebecca Bray, two individuals who were not employees of Travis County, but worked with Daugherty on the SH 45 SW project; and Michael Haynes, Lone Star Paralysis Foundation

Corporate Representative, a non-profit company that Daugherty donated his old home computer to. Each of these depositions included a subpoena duces tecum for documents relating to the litigation which were responded to by the witness. Each deposition and document request specifically sought out evidence of communications the witness had with Daugherty by cell phone, text or email regarding SH 45 SW. In short, Plaintiff has been afforded more than adequate opportunity to conduct discovery to support its claims. There is no more responsive information that Respondent has access to that he or his office have “refused” to provide.

Speculation and guesswork about other information that might still be “out there” within the control of those other than the “governing body” does not create a fact issue and cannot preserve the jurisdiction of the trial court. Because there is no longer a live controversy, the case is moot and the court no longer has subject matter jurisdiction over the claims by operation of law. Accordingly, the court must dismiss the lawsuit as a matter of law. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227-28 (Tex. 2004).

In summary, based on the above referenced evidence, arguments and authorities, under the Third Court of Appeals’ holding in *City of El Paso v. Abbott*, 444 S.W.3d 315 (Tex. App. – Austin 2014, pet. filed) and the cases and authorities cited therein, this Court must dismiss Plaintiff’s claims under Section 552.321(a) of the TPIA for lack of jurisdiction. The evidence conclusively establishes that: (a) Respondent produced all information required of him and his office under Open Records Letter Ruling OR2013-13139; (b) Respondent has not “refused” to produce public information within the meaning of the Act; and (c) Plaintiff cannot demonstrate a “refusal” to produce public information within the narrow waiver of sovereign immunity created by the Act with respect to Plaintiff’s claims against Respondent in his official capacity.

1. Plaintiff's Claims for Declaratory and Injunctive Relief Pursuant to Section 552.3215 of the Public Information Act are Moot, and Therefore Must be Dismissed for Lack of Jurisdiction.

Plaintiff seeks declaratory relief under Section 552.3215 of the TPIA, requesting the Court declare Respondent has violated the Act and must produce all responsive information immediately. *See* Plaintiff's Second Amended Original Petition at 11, ¶34. Under *City of El Paso* and the evidence and authorities asserted above this argument is still unavailing in that it is based on the false premise that Respondent is withholding public information that he and his office have access to that he is "refusing" to produce. Plaintiff has not pled and cannot prove evidence in support of these allegations sufficient to establish jurisdiction.

With respect to Plaintiff's claims for injunctive relief prohibiting "Defendant from utilizing his private cell phone account and email accounts to reference and discuss Travis County business until and at such time the Defendant can demonstrate to the Court that proper retention procedures are in place to catalog and retain such information; and (b) precluding Defendant from deleting or attempting to delete, or instructing others to delete or attempt to delete, correspondence concerning public, governmental business prior to two years after such correspondence was generated or received, or prior to any other appropriate deadline under the State's Minimum records Retention Schedule GR for local governments", these claims must also be denied as moot.

As referenced above, Travis County and Commissioner Daugherty have already adopted policies which address and accomplish the goals and objective of the requested relief. On March 17, 2015, Commissioner Daugherty submitted an Agenda Request for the March 24, 2015 Travis County Commissioners Court Agenda proposing the adoption of Chapter 42 of the Travis County Code, County Records. Subchapter B of Chapter 42 provides procedures which require Travis County employees to use county devices or accounts wherever feasible to conduct County business,

and further provides that if circumstances require a County employee to use a personal device or account to conduct County business they are required to forward the information to a County account if it is information that is required to be retained under the Records Retention Period applicable to such County records as determined by the County's Local Government Records Management Officer.

On Commissioner Daugherty's motion for approval following presentation of Chapter 42, County Records during the Open Session of its March 24th meeting, the Commissioners Court voted and adopted Chapter 42, County Records, which became effective upon adoption. *See **Attach. E***, Travis County Code, Chapter 42, County Records.

On March 23, 2015, prior to the Commissioners Court's consideration of the proposed Chapter 42, County Records, Commissioner Daugherty adopted the Travis County Precinct 3 Commissioner's Office Electronic Communication Devices Policy. Travis County Precinct 3 Commissioner's Office Electronic Communication Devices Policy places the same general requirements set forth in 'Travis County Code Chapter 42, County Records' on Commissioner Daugherty's office. *See **Attach. F***, Travis County Precinct 3 Commissioner's Office Electronic Communication Devices Policy.

The adoption of these policies moot Plaintiff's claims for injunctive relief, and conclusively refute Plaintiff's allegations that Respondent and Travis County have no policies and procedures in place to address Plaintiff's concerns. Any order granting injunctive relief would be speculative and improper. Accordingly, Plaintiff's claims for injunctive and declaratory relief must be dismissed as moot.

C. Plaintiff's Claims under the Local Government Records Act Must be Dismissed for Lack of Jurisdiction Because the Act Does Not provide for a Private Cause of Action.

To the extent Plaintiff attempt to state a claim for relief under the LGRA, such claims must be dismissed as not stating a claim within the narrow waiver of Respondent's immunity for such claims against him in his official capacity. Simply put, the LGRA does not create a private cause of action that is enforceable as a stand-alone claim. While courts have recognized that "local government records" can be public information within the meaning of the TPIA this fact standing alone does not create a cognizable cause of action for which Plaintiff is entitled to relief. Accordingly, Plaintiff's LGRA claims must be dismissed for want of jurisdiction. See, *City of El Paso v. Abbott*, 444 S.W.3d 315, 326-27 (Tex. App. – Austin 2014, pet. filed).

V.
CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Respondent prays that Plaintiff's lawsuit be dismissed for want of jurisdiction, Plaintiff take nothing by reason of its suit and that Respondent recover its expenses, with all costs of court, and any other and further relief to which he may show himself justly entitled.

Respectfully submitted,

DAVID A. ESCAMILLA
County Attorney, Travis County
P. O. Box 1748
Austin, Texas 78767
Telephone: (512) 854-9513
Facsimile: (512) 854-4808

By: /s/ Anthony J. Nelson
ANTHONY J. NELSON
State Bar No. 14885800
ANDREW M. WILLIAMS
State Bar No. 24068345
ATTORNEYS FOR TRAVIS COUNTY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Respondent's Plea to the Jurisdiction** was served in accordance with the Texas Rules of Civil Procedure via electronic filing, electronic service and/or certified mail, return receipt requested on this 8th day of April, 2015, as follows:

Via Electronic Filing

Velva Price
Travis County District Clerk
1000 Guadalupe Street
Austin, Texas 78701

Via CMRRR #7012 0470 0000 0990 7156

And Via Electronic Service

William G. Bunch
905 West Oltorf, Suite A
Austin, Texas 78704

/s/ Anthony J. Nelson

ANTHONY J. NELSON

ANDREW M. WILLIAMS

Assistant County Attorneys

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

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

ORDER GRANTING RESPONDENT'S PLEA TO THE JURISDICTION

Came on this day to be heard the Honorable Gerald Daugherty's Plea to the Jurisdiction and after considering the pleadings, evidence, and arguments of counsel for the Plaintiff, and counsel for Respondent, Daugherty, the Court finds that the plea to the jurisdiction is meritorious and should be GRANTED. Therefore, it is ORDERED, ADJUDGED, AND DECREED that Respondent's Plea to the Jurisdiction is in all things Granted and that all of the claims against Travis County Precinct 3 Commissioner Gerald Daugherty alleged by Plaintiff, are hereby dismissed for lack of jurisdiction.

SIGNED this _____ day of _____, 2015.

PRESIDING JUDGE

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Attachment A

Commissioner Daugherty is withholding and, on information and belief, has failed to produce documents required to be produced as public information under the Texas Public Information Act. Since time is of the essence in the public knowing about the County and the Commissioner's efforts to build this major highway, Plaintiff brings this action for mandamus to produce all of the public information requested on May 10, 2013.

DISCOVERY

4. Subject to an agreed order, a motion by either party to this suit or the Court's own initiative, discovery in this case should be conducted under Level 2 pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

PARTIES

5. Plaintiff is Save Our Springs Alliance (SOS or Plaintiff), a non-profit, charitable organization dedicated to the preservation of the Edwards Aquifer ecosystem and the natural and cultural heritage of the Texas Hill Country region. It can be served in this case through its attorneys of record at the address listed below.

6. Defendant is Gerald Daugherty, in his official capacity as Travis County Commissioner for Precinct 3. The Travis County Commissioners Court is a "governmental body" pursuant to the Texas Public Information Act, Tex. Govt. Code § 552.003(1)(A)(i). The Defendant is an officer for public information and the custodian pursuant to Tex. Govt. Code § 552.201. The Defendant can be served by delivering a copy of citation and this Original Petition to Commissioner Gerald Daugherty at 700 Lavaca, Suite 2.400, Austin, TX 78701.

JURISDICTION AND VENUE

7. This Court has jurisdiction to issue the mandamus relief requested under the Texas Public Information Act (TPIA or Act). Tex. Gov't. Code § 552.321. Venue is proper and mandatory in the District Court of Travis County, Texas. Tex. Gov't Code § 552.321 (b).

FACTS

8. On May 10, 2013, SOS by and through its Executive Director, William G. Bunch submitted a request for records to Commissioner Gerald Daugherty regarding the proposed SH 45 SW, the Manchaca Expressway, or other name for a proposed road or toll road along the SH 45 SW alignment or any part of such alignment. The entire request provides:

All correspondence from or to [Commissioner Daugherty] or [his] identified executive assistants since [he] took office in January 2012 to the present, that references the proposed SH 45 SW, the Manchaca Expressway, or other name for a proposed road or toll road along the SH 45 SW alignment or any part of such alignment.

The instructions make clear that the request for correspondence included:

all exchanges of information of any kind, or records thereof, including, but not limited to, telephone conference notes, meeting notes, emails, text messages, letters, notices, applications, memoranda, attachments to any of these, or other communications whether or not such information was received on, generated from, or stored on devices or data bases paid for privately or by entities other than your office or Travis County. It also includes any such correspondence where you were not the primary recipient but were "cc'ed" or "bcc'ed."

A copy of the request is Attached as Exhibit A.

9. On May 24, 2013, the Defendant, by and through an assistant county attorney, requested a letter ruling from the attorney general on the information request.

10. On May 28, 2013, the Defendant provided SOS with a minimal amount of documentation the Defendant deemed to be responsive. The letter also advised SOS of the Defendant's submission of a ruling request to the attorney general with respect to additional information that was withheld from SOS.

11. On May 30, 2013, the Defendant, by and through counsel, submitted a supplemental letter brief to the attorney general regarding the Defendant's May 24, 2013, request for a letter ruling on information the Defendant withheld from SOS. (*Attached as Exhibit "B"*). The letter vaguely asserts that the remaining information requested by SOS, and withheld by the Defendant, is excepted from disclosure because of attorney-client privilege; because it contains information that is internal communications that consists of advice, recommendations, opinions and other material reflecting the policymaking processes of the governmental body; and finally that the information is properly being withheld pursuant to a doctrine of common law privacy because the requested information contains highly intimate or embarrassing facts that are not of public concern. (*See Exhibit "B"*)

12. Attorney-client privilege only applies when a communication included a lawyer "for the purpose of facilitating the rendition of professional legal services." Tex. R. Evid. 503(b)(1). Simply because a communication involves or includes an attorney for the County does not mean the privilege applies.

13. The agency memorandum exception is applied narrowly and only applies to communications that relate to new agency policymaking. Information related to existing policy or that which is purely factual must be disclosed and may be severed from other exempted information in order to make the public information available.

14. Finally, the requested correspondence is not of the nature intended to be exempt from disclosure under the common-law privacy. The courts and the attorney general's

office have repeatedly made clear that this doctrine was adopted to protect only extremely private information that may be embarrassing if made public, such as that relating to sexual assault, intimate family relationships, pregnancy, psychiatric treatment, abuse, some medical information, personal financial information not related to a government body, and other similar information. Since the proposed SH 45 SW highway (or toll road) is a public project of great public interest, there can be nothing both "private" and "embarrassing" that would allow the withholding of documents under the personal privacy privilege.

15. On July 30, 2013 the Office of the Attorney General issued letter ruling OR2013-13139 . (*Attached as “Exhibit C”*). The letter ruling held in part that Defendant had failed to show that certain documents were subject to being withheld from public disclosure under the attorney client privilege or the draft policy making exception. The ruling was inconclusive on some other documents that were submitted for review because there was insufficient context provided by Defendant to support the privilege or exception claims. Finally, the letter ruling stated that some of the claims for withholding requested documents were justified. Among these, the ruling stated, at page 5, that “the information we have marked is highly intimate or embarrassing and of no legitimate public interest.”

16. Among the information provided by the Defendant was an email acknowledging that the Defendant had been emailing individuals about the SH 45 SW project through his personal email address. (*Attached as Exhibit “D”*) The County did not disclose these messages and made no reference to them or any others in its supplemental letter brief to the attorney general. (*See Exhibit “B”*).

17. Commissioner Daugherty has been very active since his election in pushing the development of the SH 45 SW roadway. As some of the documents provided establish,

Commissioner Daugherty serves as Chair of a subcommittee of the Capital Area Metropolitan Planning Organization concerning SH 45 SW. However, no minutes of this subcommittee or notices of its meetings were provided in response to the request.

18. SOS contends that the Defendant provided the attorney general with only a sample of the requested documentation, and that the Defendant has not produced relevant emails and text messages from his personal email and cell phone accounts and may not have provided correspondence to or from his executive assistants that reference SH 45 SW and were specifically requested by SOS. To the extent such information concerns the public business of planning for and seeking to build SH 45 SW, such information is public information regardless of whether it is stored, sent, or received on accounts or devices owned privately by Commissioner Daugherty or one or more of his Executive Assistants, and is within the scope of Plaintiff's May 10 request for public information.

CAUSES OF ACTION

Mandamus to Provide Public Records

19. Defendant violated SOS's right under the TPIA by failing to provide full disclosure of the information requested in SOS's record request dated May 10, 2013. Under the TPIA, the requested records are "public information" and subject to public disclosure.

20. SOS asks the Court to issue a writ of mandamus requiring the Defendant to "promptly" provide all copies of those records to SOS pursuant to the terms of the TPIA.

21. In the event that the Defendant asserts that the requested documents should be withheld, SOS requests that those documents be made available to Plaintiff under restrictive order pursuant to discovery request, and also made available for *in camera* review so the Court can make an informed determination on which documents and

portions of documents contain public information properly requested by Plaintiff in its May 10 request..

CLAIM ONE

22. Defendant violated SOS's right under the TPIA by redacting email addresses that were not personal email addresses, but rather were business and/or government agency email addresses not excepted by Government Code Section 552.137. Under the TPIA, the requested records are "public information" and subject to public disclosure.

CLAIM TWO

23. Defendant violated SOS's rights under the TPIA by justifying the withholding of information on the grounds that "documents containing highly intimate or embarrassing facts" and "not of legitimate concern to the public," and that ".to preserve the subject's common-law right of privacy, the information should be withheld in its entirety". (See Exhibit "A"). This exception to disclosure does not warrant withholding information as it relates to a public construction project or any other public undertaking affecting public's use of public property. While such information may be embarrassing, information concerning the proposed SH 45 SW cannot be "highly intimate" nor can it be considered not of "a legitimate concern to the public." In short, the Attorney General's ruling is wrong on this point, and the "common law privacy" doctrine cannot apply to information concerning a major public capital improvement project.

CLAIM THREE

24. Defendant violated SOS's right under the TPIA by failing to produce documents that were maintained, delivered, or received, on or from Defendant's private email and text accounts or privately owned devices. On information and belief, Defendant also failed to produce correspondence concerning SH 45 SW to or from his Executive Assistants, regardless of whether such correspondence was delivered or received on

privately owned devices or accounts. Such documents are public information and warrant disclosure when the context of the communication relates to the official business of a governmental body.

ATTORNEY FEES

25. Plaintiff asks the Court to order the Defendant to pay reasonable and necessary attorney fees and costs to Plaintiff, pursuant to Tex. Gov't Code § 552.323.

PRAYER

For these reasons, Plaintiff, Save Our Springs Alliance, requests that the Defendant be cited to appear and answer and that the Court:

- a.** order a writ of mandamus requiring the Defendant to:
 - i.** promptly provide to Plaintiff, Save Our Springs Alliance, copies of the records requested May 10, 2013 at a reasonable cost, save and except those documents demonstrated to the Court, following discovery and a hearing, to be properly withheld under the Texas Public Information Act; and
- order the Defendant to pay reasonable and necessary attorney fees and costs to Save Our Springs Alliance and grant such other and further relief, at law and in equity, to which Plaintiff may show itself to be justly entitled.

Respectfully Submitted,

SAVE OUR SPRINGS ALLIANCE, INC.

//S// William G. Bunch

William G. Bunch

State Bar No. 03342450

bill@sosalliance.org

//S//Adam R. Abrams

Adam R. Abrams

State Bar No. 24053064

adam@sosalliance.org

905 W. Oltorf, Suite A

Austin, Texas 78704

512.477.2320

512.477.6410 fax

Adam Abrams



From: Bill Bunch <bill@sosalliance.org>
Sent: Friday, May 31, 2013 1:37 PM
To: Adam Abrams; Lauren Ice
Subject: Fwd: May 10 Public Information Request

----- Original Message -----

Subject: May 10 Public Information Request

Date: Fri, 10 May 2013 16:13:01 -0500

From: Bill Bunch <bill@sosalliance.org>

Organization: Save Our Springs Alliance

To: geerald.daugherty@co.travis.tx.us

CC: barbara.smith@co.travis.tx.us, David Escamilla <David.Escamilla@co.travis.tx.us>

Via E-mail

Re: REQUEST FOR PUBLIC INFORMATION

Dear Commissioner Daugherty:

This is a request for public information under Chapter 552 of the Texas Government Code. I request that you make available for inspection and/or copying all information received, delivered, collected, assembled or maintained by you or your office that is described below.

1. All correspondence from or to you or your identified executive assistants since you took office in January 2012 to the present, that references the proposed SH 45 SW, the Manchaca Expressway, or other name for a proposed road or toll road along the SH 45 SW alignment or any part of such alignment.

INSTRUCTIONS:

You must promptly produce the requested information for inspection and/or duplication. Tex. Gov't Code, § 552.221(a). If you wish to withhold any information, you must identify all reasons and request a decision from the Attorney General, with written notice to me asserting any exceptions to the Public Information Act, within 10 business days. Tex. Gov't Code, § 552.301 - .302. "Correspondence" includes all exchanges of information of any kind, or records thereof, including, but not limited to, telephone conference notes, meeting notes, emails, text messages, letters, notices, applications, memoranda, attachments to any of these, or other communications whether or not such information was received on, generated from, or stored on devices or data bases paid for privately or by entities other than your office or Travis County. It also includes any such correspondence where you were not the primary recipient but were "cc'ed" or "bcc'ed."

The Save Our Springs Alliance is a non-profit, charitable organization dedicated to the preservation of the Edwards Aquifer ecosystem, to conservation of park and natural heritage lands, and to open, responsive government. The Alliance will use the requested information to inform and educate the general public as to the County's activities. Release of the information we have requested will primarily benefit the general public by increasing public awareness and knowledge of these matters. The Alliance therefore requests a waiver or reduction of charges associated with the release of this information, pursuant to Tex. Gov't Code § 552.267.

Thank you for your cooperation. If you have any questions about these requests and/or desire clarification or assistance, please do not hesitate to call me at 477-2320.

Sincerely,

Bill Bunch

Executive Director
Save Our Springs Alliance

DAVID A. ESCAMILLA
COUNTY ATTORNEY

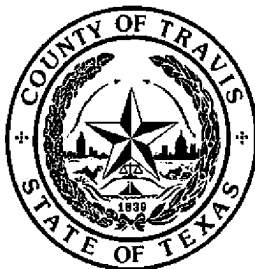
STEPHEN H. CAPELLE
FIRST ASSISTANT

JAMES W. COLLINS
EXECUTIVE ASSISTANT

314 W. 11TH. STREET
GRANGER BLDG., SUITE 420
AUSTIN, TEXAS 78701

P. O. BOX 1748
AUSTIN, TEXAS 78767

(512) 854-9513
FAX: (512) 854-4808



TRANSACTIONS DIVISION

JOHN C. HILLE, JR., DIRECTOR †

BARBARA J. WILSON

MARY ETTA GERHARDT

TENLEY A. ALDREDGE

JAMES M. CONNOLLY

DANIEL BRADFORD

ELIZABETH H. WINN

† Member of the College
of the State Bar of Texas

May 30, 2013

Hand Delivered

Ms. Amanda Crawford, Division Chief
Office of the Attorney General of Texas—Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request from **Bill Bunch** on **05/10/2013**—Request for Ruling and
Supplemental Brief

Dear Ms. Crawford:

On May 24, 2013, on behalf of the Travis County Commissioner for Precinct 3, Gerald Daugherty, we submitted a letter to your office asking for a ruling on this request. This is our supplemental brief for the ruling request. It explains the specific exceptions in Government Code chapter 552 that we believe control over the responsibility of Travis County Commissioner Gerald Daugherty to release the requested information.

Some of the requested information is excepted from disclosure under Government Code section 552.107 and Section 552.101 with Texas Rule of Evidence 503.

Government Code section 552.107(1) protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. Tex. R. Evid. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other

than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. The mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. Tex. R. Evid. 503(b)(1)(A), (B), (C), (D), (E).

Thus, a governmental body must inform your office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.--Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

In this case, some of the requested information constitutes or documents communications between lawyers of the Travis County Attorney’s Office and client and client’s representatives, as well as constituting or documenting communications between representatives of the client. These communications were made for the purpose of facilitating the rendition of professional legal services and were intended to be confidential. In addition, the confidentiality of these communications has been maintained. Accordingly, we assert that all responsive information that constitutes or documents attorney-client communications as well as those that constitutes or documents client representative communications are protected from disclosure under Government Code section 552.107(1) and Rule 503 of the Rules of Evidence with Government Code section 552.101.

Some of the responsive information is excepted from disclosure under Government Code section 552.111.

Section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See* Open Records Decision No. 631 at 3 (1995). Section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion or recommendation as to make severance of the factual data

impractical, the factual information may be withheld under 552.111. *See* Open Records Decision No. 313 at 3 (1982). In addition, a preliminary draft of a document that is intended for public release in its final form that necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document may be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor of section 552.111). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). Thus, section 552.111 encompasses the deliberative process privilege. *See* ORD 615 at 2.

In this case, we have marked responsive information that comprises intraagency documents that include advice, opinion, and recommendations about Travis County's role in relation to future road along the SH 45 SW alignment. The information was created by client and client representatives to demonstrate possible scenarios of construction and funding strategies. The information is directly related to policy matters regarding the possible construction and funding scenarios and documents the advice, opinions and recommendations of Commissioner Daugherty and his staff. To release this information would discourage frank deliberations of this matter among Commissioner Daugherty and his staff.

Some of the requested information must be withheld under Government Code section 552.101.

This request implicates Government Code section 552.101, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 incorporates the doctrine of common law privacy.

The doctrine of common law privacy protects from public disclosure information that (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) is of no legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The documents include statements that could be considered highly intimate or embarrassing. To preserve the subject's common-law right of privacy, the information should be withheld in its entirety.

In conclusion, we ask that you rule on whether the enclosed information must be released to the requestor. If you have any questions, please contact me at (512) 854-4168, or by e-mail at elizabeth.winn@co.travis.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eliz', followed by a long horizontal flourish.

Elizabeth Hanshaw Winn
Assistant County Attorney

Enclosures: request letter, requested information.

c:

Gerald Daugherty
Commissioner, Precinct 3
P.O. Box 1748
Austin, TX 78767
(emailed, without enclosures)

Bill Bunch
Executive Director
Save Our Springs Alliance
(emailed bill@sosalliance.org, without enclosures)



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2013

Ms. Elizabeth Hanshaw Winn
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767-1748

OR2013-13139

Dear Ms. Winn:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 494791.

The Office of the Travis County Commissioner, Precinct 3 (the "commissioner's office") received a request for all correspondence to or from the commissioner and/or his executive assistants referencing proposed named roads and toll roads from January 2012 to the date of the request. You state the commissioner's office is releasing some of the responsive information to the requestor, but claim the remaining requested information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. This ruling does not address the public availability of non-responsive information, and the commissioner's office is not required to release non-responsive information in response to this request.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *Id.* § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of

professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *See* TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.*, meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). Section 552.107(1) generally excepts an entire communication demonstrated to be protected by the attorney-client privilege, unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the submitted e-mail communications you have marked were made by lawyers of the Travis County Attorney's Office and the commissioner's office staff for the purpose of providing legal services to the commissioner's office. You state these e-mails were intended to be confidential and have remained confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information we have marked. Thus, the commissioner's office may generally withhold the information we have marked under section 552.107(1) of the Government Code. We note, however, some of these otherwise privileged e-mail strings include e-mails received from or sent to non-privileged parties. Furthermore, if the e-mails received from or sent to non-privileged parties are removed from the otherwise privileged e-mail strings in which they appear and stand alone, they are responsive to the requests for information. Therefore, if these non-privileged e-mails, which we have marked, are maintained by the commissioner's office separate and apart from the otherwise privileged e-mail strings in which they appear, then the commissioner's office may not withhold these non-privileged e-mails under section 552.107(1). Further, some of the submitted e-mails were sent to or received by individuals you have not demonstrated are privileged parties. Thus, we find you have not demonstrated the remaining information reveals privileged attorney-client communications for the purposes of section 552.107(1). Thus, the remaining information may not be withheld on that basis.

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. Section 552.111 encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of this exception is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, orig. proceeding); Open Records Decision No. 538 at 1–2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, orig. proceeding). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, opinions, recommendations, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See* Open Records Decision No. 631 at 3 (1995). Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *see* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

This office has also concluded a preliminary draft of a document intended for public release in its final form necessarily represents the drafter’s advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2–3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

Section 552.111 can also encompass communications between a governmental body and a third-party, including a consultant or other party with a privity of interest. *See* Open Records Decision Nos. 631 at 2 (section 552.111 encompasses information created for governmental body by outside consultant acting at governmental body’s request and performing task that

is within governmental body's authority), 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process), 462 at 14 (1987) (section 552.111 applies to memoranda prepared by governmental body's consultants). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561 at 9.

You state the information you have marked consists of advice, opinions, and recommendations regarding policy issues concerning the State Highway 45 Southwest toll road ("SH 45"). The submitted information reflects the commissioner serves as a member of the Capital Area Metropolitan Planning Organization ("CAMPO") SH 45 Committee. Upon review, we find the commissioner's office and CAMPO share a privity of interest. We understand the information you have marked pertains to CAMPO policy or reflects the deliberative and policymaking process of the CAMPO SH 45 Committee. We note some of the information you marked contains draft documents. You do not state whether the draft documents will be released to the public in final form. Thus, to the extent the draft documents will be released to the public in their final form, the commissioner's office may withhold them in their entirety under section 552.111. If the draft documents will not be released to the public in their final form, then the commissioner's office may not withhold them in their entirety under section 552.111. Further, we find the information we have marked, including information within some of the draft documents if they will not be released in final form, consists of advice, opinions, and recommendations pertaining to a policymaking matter. Accordingly, the commissioner's office may withhold the information we have marked under section 552.111. However, we find the remaining information at issue consists of either general administrative information that does not relate to policymaking or information that is purely factual in nature. Thus, we find you have failed to demonstrate how the remaining information at issue is excepted under section 552.111. Accordingly, the remaining information at issue may not be withheld under section 552.111 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information (1) containing highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. The type of information considered intimate or embarrassing by the

Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Therefore, the commissioner's office must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code.¹ Gov't Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individual at issue timely requested confidentiality under section 552.024, the commissioner's office must withhold the information we have marked in the remaining information under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the commissioner's office may not withhold the information under section 552.117(a)(1).

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the commissioner's office must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the commissioner's office may generally withhold the information we have marked under section 552.107(1) of the Government Code. However, if the non-privileged

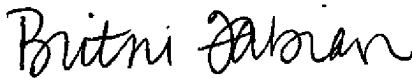
¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

e-mails we have marked are maintained by the commissioner's office separate and apart from the otherwise privileged e-mail strings in which they appear, then the commissioner's office may not withhold the non-privileged e-mails under section 552.107(1) of the Government Code. To the extent the marked draft documents will be released to the public in their final form, the commissioner's office may withhold them in their entireties under section 552.111. The commissioner's office may also withhold the advice, opinions, and recommendations we have marked, including information within some of the draft documents if they will not be released in final form, under section 552.111. The commissioner's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individual at issue timely requested confidentiality under section 552.024 of the Government Code, the commissioner's office must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The commissioner's office must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 494791

Enc. Submitted documents

c: Requestor
(w/o enclosures)



Barbara A. Smith

From: Susan Narvaiz
Sent: Wednesday, March 20, 2013 4:55 PM
To: Barbara Smith
Subject: RE: SH 45 SW meeting
Attachments: Susan Narvaiz.vcf

Barbara:

I will make that change. Thank you for all the support and "handling" as we go along. Gerald speaks so highly of his team and I can see why!

Susan

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

-----Original Message-----

From: Barbara Smith [<mailto:Barbara.Smith@co.travis.tx.us>]
Sent: Wednesday, March 20, 2013 4:52 PM
To: Susan Narvaiz
Subject: RE: SH 45 SW meeting

Susan -

Gerald has not been here this afternoon. Also, I believe you are sending emails to his personal address. Please change it to his County address:

Gerald.daugherty@co.travis.tx.us Not sure how often he is checking personal emails these days. Bob forwarded today's email with media release and progress report to me so I do have it. I will make sure Gerald sees it. Not sure about the one on Saturday.

Thanks,
Barbara

-----Original Message-----

From: Susan Narvaiz
Sent: Wednesday, March 20, 2013 4:47 PM
To: Barbara Smith
Subject: FW: SH 45 SW meeting

Barbara:

I followed up with Deena and she has updated the calendar. Please make sure Gerald knows I responded.

Can you also check to see that Gerald received the summary he requested that I send on Saturday and again on Tuesday along with a draft media release. Just want to make sure it is in his hands for review and changes.

Thank you much!

Susan

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

-----Original Message-----

From: Estrada, Deena [<mailto:Deena.Estrada@austintexas.gov>]

Sent: Wednesday, March 20, 2013 3:39 PM

To: Susan Narvaiz

Subject: RE: SH 45 SW meeting

Susan,

I was in and out of the office last week and this must have fallen through the cracks. I added the appointment to CM Spelman's calendar and this led to two notices for the same meeting. One moved and the other remained on today's calendar. Apologies on my end. In the future, I will just wait for your appointment notice and not add my own.

CM Spelman will be present at the next meeting but will arrive late due a previously scheduled commitment.

Many thanks!

Best,

Deena

-----Original Message-----

From: Susan Narvaiz

Sent: Wednesday, March 20, 2013 2:26 PM

To: Estrada, Deena

Subject: SH 45 SW meeting

Deena

I just learned that Councilmember Spelman thought we had a meeting today. I apologize for any confusion. We sent a cancellation and rescheduled for next Wednesday.

Please accept my apology and let me know if there is a different way I should communicate.

Thank you

Susan Narvaiz
102 Wonder World Drive
Suite 301
San Marcos, TX 78666
512-353-4633 office

CIVIL CASE INFORMATION SHEET

MAY ENTER CAUSE # / COURT # IF ALREADY ASSIGNED (E.G., FAMILY MOTION, AMENDED PETITION)

CAUSE NUMBER (FOR CLERK USE ONLY):

COURT (FOR CLERK USE ONLY):

STYLED Save OUR Spring Alliance, Inc., v. Gerald Daugherty, In his official capacity as Travis County Commissioner PET 3

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

Name: <u>Adam Abrams</u> Address: <u>905 W. 0102F</u> <u>Suit A</u> City/State/Zip: <u>Austin, Tx 78705</u> Signature: <u>Adam Abrams</u>		Email: <u>adam@sosalliance.org</u> Telephone: <u>512-477-2320</u> Fax: <u>512-477-6410</u> State Bar No.: <u>24053064</u>		Plaintiff(s)/Petitioner(s): <u>Save OUR Springs, Inc.</u> Defendant(s)/Respondent(s): <u>Gerald Daugherty</u> <u>In his official capacity</u> <u>as Travis County</u> <u>Commissioner</u> <small>(Attach additional page as necessary to list all parties)</small>		<input type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
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Indicate the type of case by checking the most appropriate box in the following section.

OPTION A: CK CASE TYPE (EXCEPT OTHER) FOR CLERK TO SELECT SUIT TYPE; SEE SEC. 3 NOTE BELOW. **Civil**

Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Family Law <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	Enforcement/Modification <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Enforcement/Modification <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order
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OPTION B: CK OTHER & ENTER 3-LETTER SUIT TYPE FOR CLERK TO USE WHEN DOCKETING

Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Expiration <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: <u>Public Records</u>	Probate & Mental Health <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____
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Indicate any remedy or remedies applicable (from following list):

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input checked="" type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
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OPTION C: SECTION 3 PROCEDURES/REMEDIES IN BOLD MAY BE USED AS CASE OR SUIT TYPES. YOU MAY SPECIFY THAT ONE OF THESE PROCEDURES/REMEDIES BE USED AS A SUIT TYPE BY CHECKING IT AND LEAVING THE CASE TYPE IN SECTION 2 BLANK. SELECTING A CASE TYPE IN SECTION 2 OVERRIDES ANY SELECTION IN SECTION 3.

RECEIVED

MAY 30 2013

DAVID A. ESCAMILLA
COUNTY ATTORNEY

STEPHEN H. CAPELLE
FIRST ASSISTANT

JAMES W. COLLINS
EXECUTIVE ASSISTANT

314 W. 11TH, STREET
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AUSTIN, TEXAS 78701

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AUSTIN, TEXAS 78767

(512) 854-9513
FAX: (512) 854-4808



OPEN RECORDS DIVISION

TRANSACTIONS DIVISION

JOHN C. HILLE, JR., DIRECTOR †

BARBARA J. WILSON

MARY ETTA GERHARDT

TENLEY A. ALDREDGE

JAMES M. CONNOLLY

DANIEL BRADFORD

ELIZABETH H. WINN

† Member of the College
of the State Bar of Texas

COPY

May 30, 2013

Hand Delivered

Ms. Amanda Crawford, Division Chief
Office of the Attorney General of Texas—Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request from **Bill Bunch** on **05/10/2013**—Request for Ruling and
Supplemental Brief

Dear Ms. Crawford:

On May 24, 2013, on behalf of the Travis County Commissioner for Precinct 3, Gerald Daugherty, we submitted a letter to your office asking for a ruling on this request. This is our supplemental brief for the ruling request. It explains the specific exceptions in Government Code chapter 552 that we believe control over the responsibility of Travis County Commissioner Gerald Daugherty to release the requested information.

Some of the requested information is excepted from disclosure under Government Code section 552.107 and Section 552.101 with Texas Rule of Evidence 503.

Government Code section 552.107(1) protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. Tex. R. Evid. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other

than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. The mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. Tex. R. Evid. 503(b)(1)(A), (B), (C), (D), (E).

Thus, a governmental body must inform your office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.--Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

In this case, some of the requested information constitutes or documents communications between lawyers of the Travis County Attorney's Office and client and client's representatives, as well as constituting or documenting communications between representatives of the client. These communications were made for the purpose of facilitating the rendition of professional legal services and were intended to be confidential. In addition, the confidentiality of these communications has been maintained. Accordingly, we assert that all responsive information that constitutes or documents attorney-client communications as well as those that constitutes or documents client representative communications are protected from disclosure under Government Code section 552.107(1) and Rule 503 of the Rules of Evidence with Government Code section 552.101.

Some of the responsive information is excepted from disclosure under Government Code section 552.111.

Section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995). Section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion or recommendation as to make severance of the factual data

impractical, the factual information may be withheld under 552.111. *See* Open Records Decision No. 313 at 3 (1982). In addition, a preliminary draft of a document that is intended for public release in its final form that necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document may be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor of section 552.111). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). Thus, section 552.111 encompasses the deliberative process privilege. *See* ORD 615 at 2.

In this case, we have marked responsive information that comprises intraagency documents that include advice, opinion, and recommendations about Travis County's role in relation to future road along the SH 45 SW alignment. The information was created by client and client representatives to demonstrate possible scenarios of construction and funding strategies. The information is directly related to policy matters regarding the possible construction and funding scenarios and documents the advice, opinions and recommendations of Commissioner Daugherty and his staff. To release this information would discourage frank deliberations of this matter among Commissioner Daugherty and his staff.

Some of the requested information must be withheld under Government Code section 552.101.

This request implicates Government Code section 552.101, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 incorporates the doctrine of common law privacy.

The doctrine of common law privacy protects from public disclosure information that (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) is of no legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The documents include statements that could be considered highly intimate or embarrassing. To preserve the subject's common-law right of privacy, the information should be withheld in its entirety.

In conclusion, we ask that you rule on whether the enclosed information must be released to the requestor. If you have any questions, please contact me at (512) 854-4168, or by e-mail at elizabeth.winn@co.travis.tx.us.

Sincerely,



Elizabeth Hanshaw Winn
Assistant County Attorney

Enclosures: request letter, requested information.

c:

Gerald Daugherty
Commissioner, Precinct 3
P.O. Box 1748
Austin, TX 78767
(emailed, without enclosures)

Bill Bunch
Executive Director
Save Our Springs Alliance
(emailed bill@sosalliance.org, without enclosures)

DAVID A. ESCAMILLA
COUNTY ATTORNEY

STEPHEN H. CAPELLE
FIRST ASSISTANT

JAMES W. COLLINS
EXECUTIVE ASSISTANT

314 W. 11TH STREET
GRANGER BLDG., SUITE 420
AUSTIN, TEXAS 78701

P. O. BOX 1748
AUSTIN, TEXAS 78767

(512) 854-9513
FAX: (512) 854-4808



TRANSACTIONS DIVISION

JOHN C. HILLE, JR., DIRECTOR†

BARBARA J. WILSON

MARY ETTA GERHARDT

TENLEY A. ALDREDGE

JAMES M. CONNOLLY

DANIEL BRADFORD

ELIZABETH H. WINN

† Member of the College
of the State Bar of Texas

May 28, 2013

Bill Bunch
Executive Director
Save Our Springs Alliance

Via email: bill@sosalliance.org

Re: Public Information Request to the Travis County Commissioner, Precinct 3, Gerald Daugherty on **5/10/2013**—Partial Responsive Information

Dear Mr. Bunch:

You requested from the Travis County Commissioner Gerald Daugherty the following information:

- “All correspondence from you or to you or your identified executive assistances since you took office in January 2012 to the present, that references the proposed SH 45 SW, the Manchaca Expressway, or other name for a proposed road or toll road along the SH 45 SW alignment or any part of such alignment.”

Please be advised that copies of some of the requested information are enclosed. Some information had to be redacted, including personal email addresses and cell phone numbers. By now, you should have received a copy of the ruling request to the Texas Attorney General's office with respect to the remaining information.

If you have any questions, please contact me at (512) 854-4168, or by e-mail at elizabeth.winn@co.travis.tx.us.

Sincerely,

Elizabeth Hanshaw Winn
Assistant County Attorney

Enclosure

292170-1 212

Attachment C

ORR 2120001

Ramiro Gonzalez

From: Ramiro Gonzalez
Sent: Tuesday, August 06, 2013 3:49 PM
To: bill@sosalliance.org
Cc: Gerald Daugherty; Barbara A.Smith; Travis Lyle; Elizabeth Winn; Bob Moore
Subject: RE: Public Information Request-Bunch
Attachments: Bunch OR2013-13139.PDF; Bunch AG marked documents.PDF

Mr. Bunch,

Please see the attached Office of the Attorney General ruling and the information the OAG ruled that should be released.

Respectfully,
Ramiro "Ram" Gonzalez
Legal Secretary to Elizabeth Winn

From: Elizabeth Winn
Sent: Thursday, May 30, 2013 1:29 PM
To: bill@sosalliance.org
Cc: Gerald Daugherty; Barbara A.Smith; Travis Lyle; Ramiro Gonzalez
Subject: Public Information Request-Bunch

Dear Mr. Bunch:

Please review the latest attachment regarding your public information request.

Elizabeth Hanshaw Winn
Assistant County Attorney
Travis County Attorney's Office

P.O. Box 1748
Austin, Texas 78767

Phone: 512.854.4168
Fax: 512.854.4808
email: elizabeth.winn@co.travis.tx.us

CONFIDENTIAL COMMUNICATION
ATTORNEY/CLIENT PRIVILEGE

The information contained in this transmission may be privileged or confidential. It is intended only for the use of the person(s) named above. If you are not the intended recipient, this is notice that any review, distribution, or duplication of this communication is strictly prohibited. If you are not the intended recipient, please email the sender and destroy all copies of the original message, immediately.

**Order of the Travis County Commissioners Court
Amending the Travis County Code**

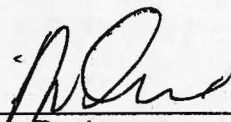
Pursuant to Chapter 2 of the Travis County Code, it is ordered that the Travis County Code is amended by adopting *Chapter 42. County Records* as shown in the attached Exhibit 1

ORDERED on: (date) MARCH 24, 2015

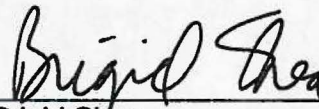
Travis County Commissioners Court



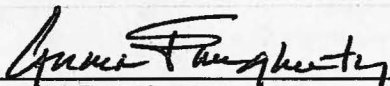
Sarah Eckhardt
Travis County Judge



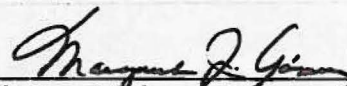
Ron Davis
Commissioner, Precinct 1



Brigid Shea
Commissioner, Precinct 2



Gerald Daugherty
Commissioner, Precinct 3

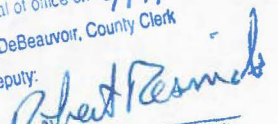


Margaret Gómez
Commissioner, Precinct 4

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 4/7/15




Dana DeBeauvoir, County Clerk
By Deputy:


Robert Resnick

Chapter 42. County Records¹

Contents:

Subchapter A. General Provisions of Chapter 1	
42.001	Authority 1
42.002	Intent of Chapter 1
42.003	Effective Date 1
42.004	Definitions 1
(42.005 – 42.009 Reserved for Expansion) 2	
Subchapter B. Records on Electronic Communications Devices 2	
42.010	Conducting County Business 2

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 4/7/15
Dana DeBeauvoir, County Clerk
By Deputy 
Robert Resnick

Subchapter A. General Provisions of Chapter

42.001 Authority

The Travis County Commissioners Court adopts this chapter under the authority of the laws of the State of Texas.

42.002 Intent of Chapter

Existing and emerging electronic communications technologies have become an integral part of efficiently and effectively conducting County business. Such technology has the potential to enhance employee productivity and provide a higher level of service to the residents of Travis County. With such technology in the work environment, however, the County must ensure that it continues to meet its legal obligations regarding public information and records retention. To that end, the Travis County Commissioners Court adopts these rules to create a consistent policy for processing written communications regarding county business on electronic communication devices.

42.003 Effective Date

This chapter becomes effective on the date the Commissioners Court adopts it.

42.004 Definitions

In this chapter:

- (1) "County Account" means any County owned, leased, or controlled account issued to a County employee or agent for communicating or maintaining County Public Information. County Account includes email, text message, social media, and instant message accounts.

¹ Chapter 42 was adopted by Travis County Commissioners Court on (DATE), Item (AGENDA ITEM).

- (2) "County Device" means a County owned, leased, or controlled device issued to a County employee or agent for communicating County Public Information. County Device includes tablets, cell phones, and laptops.
- (3) "County Public Information" means information that is written, produced, collected, assembled, or maintained in connection with the transaction of official County business by a County employee or agent in the employee's or agent's official capacity. County Public Information includes emails, text messages, instant messages, social media content, images, and attachments.
- (4) "Personal Account" means an account that a County employee or agent uses for communication that is not County owned, leased, or controlled. Personal Account includes email, text message, social media, and instant message accounts.
- (5) "Personal Device" means any device that a County officer, employee, or agent uses for communication that is not County owned, leased, or controlled. Personal Device includes tablets, cell phones, and laptops.
- (6) "Record Retention Period" means the length of time that County Public Information must be kept according to Texas law as determined by the County's Local Government Records Management Officer.

(42.005 – 42.009 Reserved for Expansion)

Subchapter B. Records on Electronic Communications Devices

42.010 Conducting County Business

- (a) Whenever feasible County employees or agents will use a County Device or County Account to transmit the County's Public Information.
- (b) If circumstances require a County employee or agent to use a Personal Device or Personal Account to transmit the County's Public Information, the communication must be forwarded to a County Account for retention, so long as the information's Record Retention Period requires it to be kept.
- (c) Once the County's Public Information has been forwarded to a County Account, the information will be retained according to the applicable Records Retention Period. The County employee or agent is responsible for any application or other technology needed to forward the County's Public Information to a County Account.
- (d) Executive Managers will ensure that all of their respective employees or agents are trained on this policy. In addition, the County's Human Resources Management Department will train all new hires on this policy at employee orientation. A county employee or agent will acknowledge in a verifiable

I, Dana DeBeauvoir, County Clerk, Travis County,
Texas, do hereby certify that this is a true and
correct copy as same appears of record in my office.
Witness my hand and seal of office on 4/7/15



Dana DeBeauvoir, County Clerk
By Deputy: Robert Resnick

Robert Resnick

manner the training that was provided to them by their department or at employee orientation, whichever applies.

I, Dana DeBeauvoir, County Clerk, Travis County,
Texas, do hereby certify that this is a true and
correct copy as same appears of record in my office.
Witness my hand and seal of office on 4/7/15



Dana DeBeauvoir, County Clerk
By Deputy

Robert Resnick
Robert Resnick

CERTIFIED MINUTES EXCERPT

The Travis County Commissioners' Court convened on March 24, 2015. The following Item was considered:

33. Consider and take appropriate action to approve the order of adoption of Chapter 42. County Records into the Travis County Code. (Commissioner Daugherty)

Members of the Court heard from:

Tony Nelson, Assistant County Attorney

MOTION:	Approve Item 33.
RESULT:	APPROVED [UNANIMOUS]
MOVER:	Gerald Daugherty, Commissioner
SECONDER:	Margaret J. Gómez, Commissioner
AYES:	Eckhardt, Davis, Shea, Daugherty, Gómez

I, Dana DeBeauvoir, County Clerk and Ex-Officio Clerk of the Commissioners' Court of Travis County, Texas, do hereby certify that the above is correct information from the Proceedings of the Commissioners' Court of Travis County, Texas.

Witness my hand and seal, this the 25th day of March, 2015.



DANA DeBEAUVOIR
County Clerk and Ex-Officio Clerk
of the Commissioners' Court of
Travis County, Texas

By: _____

Robert Resnick, Deputy



PCT. 3 Commissioner's Office Electronic Communication Devices Policy

I. Definitions

In this Policy:

- (a) **"County Account"** means any County owned, leased, or controlled account issued to a PCT 3 employee for communicating or maintaining County Public Information. County Account includes email, text message, social media, and instant message accounts.
- (b) **"County Device"** means a County owned, leased, or controlled device issued to a PCT. 3 employee for communicating County Public Information. County Device includes PCs, tablets, cell phones, and/or laptops.
- (c) **"County Public Information"** means information that is written, produced, collected, assembled, or maintained in connection with the transaction of official County business by a County employee or agent in the employee's or agent's official capacity. ***This includes, but is not limited to PCT. 3 employees.*** County Public Information includes emails, text messages, instant messages, social media content, images, and attachments.
- (d) **"Personal Account"** means an account that a PCT. 3 employee uses for communication that is not County owned, leased, or controlled. Personal Account includes email, text message, social media, and instant message accounts.
- (e) **"Personal Device"** means any device that a PCT. 3 employee uses for communication that is not County owned, leased, or controlled. Personal Device includes tablets, cell phones, and laptops.
- (f) **"Record Retention Period"** means the length of time that County Public Information must be kept according to Texas law as determined by the County's Local Government Records Management Officer, the designated Records Management Officer for PCT. 3 Commissioner's Office.

II. Policy

(a) It is the express policy of the Travis County Precinct 3 Commissioner's Office ("PCT. 3") that whenever feasible PCT. 3 employees will use a County Device or County Account to transmit the County's Public Information.

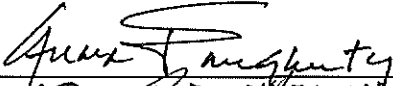
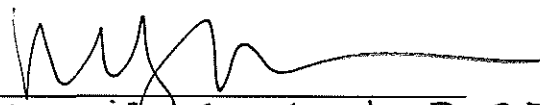
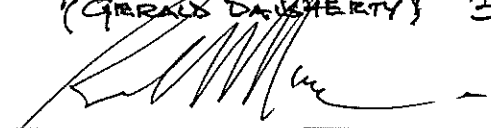
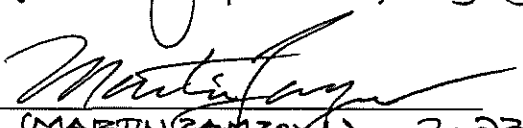
(b) If circumstances require a PCT. 3 employee to use a Personal Device or Personal Account to transmit the County's Public Information, the communication must be forwarded to a County Account for retention, unless there is no administrative value in retaining the communication in accordance with the applicable Records Retention Period. PCT. 3 employees are strongly encouraged to consult with the Director of Travis County Records Management & Communications Resources Department, the designated Records Manager Officer¹ for PCT. 3, or his designee regarding any questions pertaining to the applicable retention period for information that may be subject to this Policy.

(c) Once the County's Public Information has been forwarded to a County Account, the information will be retained according to the applicable Records Retention Period, pursuant to the Travis County and PCT 3 Records Retention Policies. PCT. 3 employees who utilize a Personal Device or Personal Account are responsible for any application or other technology needed to forward the County's Public Information to a County Account if such application or other technology is not available through the Travis County IT Department.

(d) All PCT. 3 employees will acknowledge and comply with this Policy. In addition, PCT. 3 employees will complete any training offered by or through the Travis County's Human Resources Management Department and/or the Travis County Records Management & Communications Resources Department determined to be applicable to this Policy.

III. Effective Date

This Policy is to take effect immediately upon acknowledgment and signing.

 (GERALD DAUGHERTY) 3.23.15	 (MADISON GESSNER) 3.23.15
 (BOB MOORE) 3.23.15	 (MARTIN ZAMZOV) 3.23.15

¹ At the time of adoption of this Policy the designated Records Management Officer for the PCT. 3 Commissioner's Office is Steven Broberg, Director, Travis County Records Management & Communication Resources Department.

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

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

State of Texas	§
	§
County of Travis	§

AFFIDAVIT OF GERALD DAUGHERTY,
TRAVIS COUNTY COMMISSIONER, PCT. 3

Before me the undersigned authority on this day personally appeared Gerald Daugherty, who being by me first duly sworn on his oath deposed and said:

"My name is Gerald Daugherty. I am the duly elected Commissioner for Precinct 3 of the Travis County, Texas Commissioners Court, serving in that capacity since January 1, 2013. I previously served as Travis County Precinct 3 Commissioner from January 1, 2002 through December 31, 2008. I am the named defendant in the above captioned lawsuit in my official capacity. I am over twenty-one (21) years of age, of sound mind, have never been convicted of a felony, and am fully competent and duly authorized to make this affidavit. I have personal knowledge of all facts stated in this affidavit, and they are true and correct."

1. "As I testified to in my deposition in this lawsuit, I recall my office receiving the May 10, 2013 Public Information Request ("May 10th PIR" or "PIR") from Save Our Springs Alliance ("SOSA") seeking information from my office regarding State Highway 45 Southwest ("SH 45 SW"). As I recall, the May 10th PIR was brought to my attention by Barbara Smith, one of my Executive Assistants. At the time Ms. Smith functioned as my office manager, handling most of the administrative, filing and clerical duties for my office. Ms. Smith also managed my calendar and scheduling and had proxy access to my Travis County email account. As I testified to in my deposition, generally when PIRs were received by my office they were brought to my attention by Ms. Smith."
2. "As I previously testified, after the May 10th PIR was received I directed my staff, (which at the time consisted of Executive Assistants Barbara Smith, Bob Moore and Martin Zamzow) to gather whatever information that we had in our files that might be responsive, and get it to Barbara to be provided to the County Attorney's Office for review in connection with responding to the May 10th PIR."

3. "Ms. Smith searched my office files, my Travis County-assigned office desktop computer, and my Travis County email account, as well as the Travis County desktop computer and email account assigned to her, and all of the office files she maintained. My other two Executive Assistants, Bob Moore and Martin Zamzow, searched their assigned Travis County desktop computers and email accounts, and any files they maintained. As previously testified to in my deposition, as well as in my interrogatory responses, I also searched my home computer for any information that I had that was responsive to the May 10th PIR, and forwarded any responsive information I found to Ms. Smith for inclusion. As I have previously testified, it was rare for me to use my home computer to conduct County business. Generally when I did so it was my practice to forward the information to Ms. Smith's county email or my county email for her to handle."
4. "During both my current tenure as Pct. 3 Commissioner, as well as during my previous term in office as Pct. 3 Commissioner, it has been the practice and procedure of my office that when PIRs are received seeking information relating to Pct. 3 or other Travis County business, a member of my staff notifies the Travis County Attorney Office ("TCAO") of our receipt of the request, then my office gathers whatever information we have that might be responsive to the request, and provides it to the TCAO for their review and consideration in preparing a response to the PIR. At the time of the May 10th PIR Assistant Count Attorney Elizabeth Winn ("ACA Winn") was responsible for handling PIRs for the TCAO."
5. "Based on the information my office provided that was responsive to the May 10th PIR, ACA Winn provided certain information that was responsive to the request to SOSA, and sought an opinion from the Office of the Attorney General of Texas ("OAG") regarding other information that was withheld by ACA Winn based on the assertion of privileges and/or exemptions under the Public Information Act."
6. "The OAG issued an opinion in response to the request submitted by ACA Winn regarding the May 10th PIR. I was advised by ACA Winn that the OAG's opinion designated certain information from the documentation submitted for review to be withheld as indicated, and designated other information to be produced as indicated in the opinion. I was further advised by ACA Winn that on behalf of my office, ACA Winn provided additional responsive information to SOSA in accordance with the OAG OR Opinion. It is my understanding that ACA Winn fully complied, and produced all additional information identified for production in the OAG's opinion ruling."
7. "On November 12, 2013 SOSA filed this lawsuit."
8. "In addition, on November 13, 2013, SOSA submitted a second PIR to my office seeking information relating to SH 45 SW. In response to the 2nd SOSA PIR my staff and I again searched our office files and computers for information that might be responsive, gathered the information and provided it to ACA Winn for review and response. ACA Winn provided additional documentation to SOSA in response to the November 13, 2013 PIR."

9. "I was served with citation and a copy of the original petition in this lawsuit, naming me as the defendant in my official capacity. The SOSA lawsuit was assigned to the TCAO and ACA Anthony J. ("Tony") Nelson for representation. I was also served with written discovery in the form of interrogatories, request for production of documents, and request for admissions. At ACA Nelson's direction, a litigation hold was put in place."
10. At the direction of ACA Nelson, my staff and I again reviewed the information that my office had that might be responsive to the written discovery requests served on me in the lawsuit. The written discovery direct to me included requests for me to identify and produce documents that had been produced in response to the May 10th PIR, as well as identifying and producing the documentation that was provided to the OAG in connection with the request for an OAG OR Opinion. On advice of ACA Nelson I also authorized Travis County IT to run electronic searches of the Travis County Outlook electronic mailboxes maintained by Travis County on its server for myself and my staff members relating to SH 45 SW."
11. "On February 20, 2014, I was deposed by Plaintiff in connection with this lawsuit. Through my attorney ACA Nelson I also produced records responsive to the duces tecum request included with the notice of my deposition."
12. "In addition to my deposition being taken in this case, I am also aware that the depositions of my Executive Assistant Bob Moore and former Executive Assistant Barbara Smith (now retired) were also taken."
13. "In addition, SOSA took the depositions of Travis County employees John Stark and Shawn Malone; Suzan Narvaiz and Rebecca Bray, two individuals who were not employees of Travis County, but had worked with me on the SH 45 SW project; and Lone Star Paralysis Foundation Corporate Representative Michael Haynes."
14. "On March 19, 2014 I timely submitted my corrections to the transcript of my deposition testimony."
15. "In my deposition I was questioned regarding my efforts to retrieve copies of text messages from my personal cell phone that might have pertained to County business, specifically County business regarding SH 45 SW that would have been responsive to the May 10th PIR. As I testified, and as I have indicated in my written responses to discovery in this case, I did inquire with my carrier, AT&T, and was informed that those records, if available, could be obtained through a subpoena. Through my counsel I further agreed to facilitate any efforts by Plaintiff to subpoena my cell phone records, provided I received a copy of any records obtained. In addition, I reviewed the text messages that were still available on my personal cell phone. None of those messages involved Travis County business relating to SH 45 SW, and therefore were not responsive to the May 10th PIR."
16. "On April 14, 2014, through ACA Nelson, I timely submitted my responses to SOSA's Second Set of Interrogatories and Second Request for Production of Documents. With the assistance of ACA Nelson and his paralegal, Amy Pollock, my staff and I reviewed

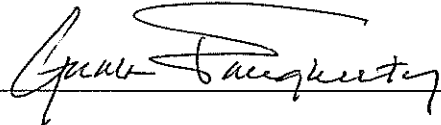
information that my office might have that would be responsive to these discovery requests and provided the information to ACA Nelson for review and determination of what information was responsive. I authorized the Travis County IT Department to conduct searches of the Outlook electronic mailboxes for my staff (past and present) and I maintained on the Travis County servers in connection with responding to this discovery.”

17. “On July 28, 2014, through ACA Nelson I timely submitted my responses to SOSA’s Second Request for Admissions. I assisted ACA Nelson and his staff in responding to these requests.”
18. “On August 26, 2014, through ACA Nelson and his staff, I submitted my supplemental responses to SOSA’s First and Second Request for Production. In my supplemental responses to these requests I specifically authorized my attorney to release in unredacted format documents that had been previously released with redactions pursuant to authorization by the OAG in its OR Opinion. It is my understanding that the documentation produced in these supplemental responses also included information/documentation located as result of Travis County IT’s searches of the Outlook electronic mailboxes for my staff (past and present) and I maintained on the Travis County servers. In so doing, I specifically authorized my attorney to release more information than what I was required to release under the OAG’s OR Opinion. It is my understanding my attorney complied with my instructions to release the additional information in the August 26th supplemental responses. ”
19. “On October 1, 2014, through ACA Nelson, I served SOSA with a detailed privilege log. It is my understanding the Privilege Log prepared by my attorney identified every document in my possession or the possession of my office or my staff that had previously been withheld and/or had information within the document redacted in the course of discovery in this lawsuit. It is further my understanding the Privilege Log prepared by ACA Nelson identified the specific documents that were produced on August 26, 2014 in unredacted format that had been previously withheld and/or produced in redacted format.”
20. “By subsequent letter dated October 20, 2014 addressed to me from AT&T, I learned of SOSA’s issuance of a subpoena for my cell phone records from January 1, 2013 through November 3, 2013. I did not take any step to resist or contest this subpoena.”
21. “On March 17, 2015, I submitted an Agenda Request for the March 24, 2015 Travis County Commissioners Court Agenda proposed Chapter 42 of the Travis County Code, County Records. Subchapter B of Chapter 42 provides procedures which require Travis County employees to use county devices or accounts wherever feasible to conduct County business, and further provides that if circumstances require a County employee to use a personal device or account to conduct County business they are required to forward the information to a County account if it is information that is required to be retained under the Records Retention Period applicable to such County records as determined by the County’s Local Government Records Management Officer.”

22. "On March 24, 2015, after the proposed Chapter 42, County Records was presented in Open Session of the Travis County Commissioners Court, on my motion for approval, the Commissioners Court voted and adopted Chapter 42, County Records, which became effective upon adoption."
23. "On March 23, 2015, prior to the Commissioners Court's consideration of the proposed Chapter 42, County Records, (restricting the use of personal devices to conduct County business) I adopted the Travis County Precinct 3 Commissioner's Office Electronic Communication Devices Policy for my office. Travis County Precinct 3 Commissioner's Office Electronic Communication Devices Policy places the same general requirements set forth in 'Travis County Code Chapter 42, County Records' on my office."
24. "As a result of the steps outlined in Paragraphs 1-23, above, to the best of my knowledge, information and belief, I have produced any and all documentation in my custody or control that I have access to that is responsive to SOSA's May 10th PIR, regardless of whether the information was on a Travis County device, or a personal device that I used while conducting County business relating to SH 45 SW, if any, unless such information was subject to a specific privilege identified in the Privilege Log submitted by my attorney, ACA Nelson and/or authorized for withholding by the OAG."
25. "To the best of my knowledge information and belief, all members of my staff, past and present, have also produced any and all documentation in their custody or control that they have access to that is responsive to SOSA's May 10th PIR, regardless of whether the information was on a Travis County device, or a personal device that they used while conducting County business relating to SH 45 SW, if any, unless such information was subject to a specific privilege identified in the Privilege Log submitted by my attorney, ACA Nelson and/or authorized for withholding by the OAG."
26. "To the best of my knowledge information and belief, I have taken all reasonable steps that I am aware of to locate documentation and information that is responsive to SOSA's May 10th PIR, regardless of whether the information was on a Travis County device, or a personal device that was used while conducting County business relating to SH 45 SW."
27. "To the best of my knowledge information and belief, my staff, past and present, has taken all reasonable steps that I am aware of to locate documentation and information that is responsive to SOSA's May 10th PIR, regardless of whether the information was on a Travis County device, or a personal device that was used while conducting County business relating to SH 45 SW."
28. "As a result of the adoption of Chapter 42, County Records, of the Travis County Code, and my office's adoption of the Travis County Precinct 3 Commissioner's Office Electronic Communication Devices Policy for my office both Travis County and my office have adopted specific policies and procedures requiring the use of County devices and accounts wherever feasible to conduct County business, and requiring County

business conducted on personal devices or accounts to be forwarded to a County account for retention as required by any applicable retention period required for the information.”

Further Affiant Sayeth Not.



Hon. Gerald Daugherty

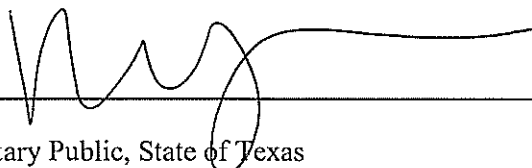
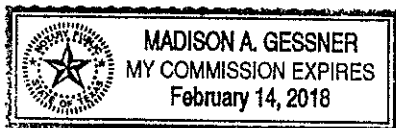
Travis County Commissioner, Precinct No. 3

THE STATE OF TEXAS

COUNTY OF TRAVIS

On this day personally appeared the person know to me to be Gerald Daugherty who after have been duly sworn stated upon his oath that he is over the age of 21 years and was competent to make an oath, that he had read the above and foregoing Affidavit of Gerald Daugherty, that he had personal firsthand knowledge of all facts and matters stated in the above and foregoing Affidavit, that all facts and matters stated therein were true and correct.

SWORN TO AND SUBSCRIBED before me on the 7th day of April, 2015.


Notary Public, State of Texas

My commission expires: 2.14.18

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

**SAVE OUR SPRINGS ALLIANCE,
INC.**

Plaintiff,

v.

**GERALD DAUGHERTY
In His Official Capacity as Travis
County Commissioner for Precinct 3
Defendant.**

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

53RD JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

THE STATE OF TEXAS

COUNTY OF TRAVIS

AFFIDAVIT OF ROBERT A. (BOB) MOORE

Before me, the undersigned authority, personally appeared Robert (Bob) Moore, being by me duly sworn, and deposed as follows:

"My name is Robert A. (Bob) Moore, I am over twenty-one years of age, I am of sound mind and I am authorized to make this affidavit. All the statements contained herein are within my personal knowledge and are true and correct.

1. From January 1, 2013, to present, I have been employed by Travis County, Texas in the position of Executive Assistant for Travis County Precinct 3 Commissioner Gerald Daugherty. I also previously worked for Commissioner Daugherty in the same position during his previous term as Precinct 3 Commissioner. I have worked continuously for Travis County since December 2002.
2. I am aware of the lawsuit filed under the Public Information Act against Commissioner Daugherty in his official capacity by the Save Our Spring (SOS) Alliance in connection with a May 10, 2013, request for public information ("PIR") made by SOS Alliance to Commissioner Daugherty's office for information relating to SH 45 SW. I gave a deposition in this lawsuit on February 20, 2014.
3. In my position as Executive Assistant for Commissioner Daugherty I am responsible for working on, and assisting Commissioner Daugherty on issues involving Travis County and Precinct 3 interests as assigned by the Commissioner. This includes, but is not limited to, constituent relations matters involving various issues. One of the areas that I am frequently assigned to work on is transportation issues. Amongst the transportation issues I have worked on for Commissioner Daugherty and the Precinct 3 Commissioner's Office are

matters relating to SH 45 SW.

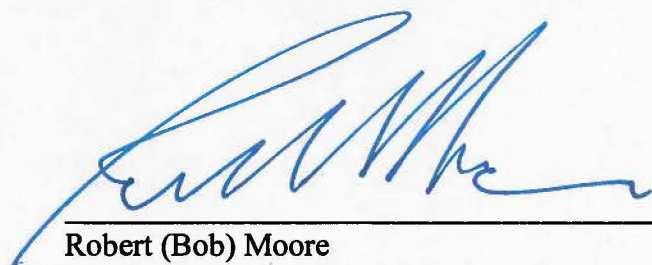
4. During my tenure as Commissioner Daugherty's Executive Assistant when Commissioner Daugherty or the Pct. 3 Commissioner's Office would receive a request for information under the Public Information Act (formerly the Open Records Act) the Executive Assistant who served as Commissioner Daugherty's Office Manager and Administrative Assistant was generally responsible for bringing the request to Commissioner Daugherty's attention. At the time of receipt of the May 10th PIR this was Barbara Smith. Ms. Smith retired in January of 2014. Her successor in the position is Madison Gessner. If the PIR was received by one of the other Executive Assistants (Martin Zamzow or myself) we would route it to Ms. Smith (now Ms. Gessner) and Commissioner Daugherty for handling.
5. Once a PIR was received by our office, the general procedure that has been followed is to notify the Travis County Attorney's Office of the request, gather whatever information our office had that we believed might be responsive, and forward the information to the County Attorney assigned to handle PIRs for review and preparation of the response.
6. As I recall it, Ms. Smith was the first person to be aware of the May 10, 2013, PIR from SOS Alliance for information pertaining to SH 45 SW. The May 10th PIR was received by Commissioner Daugherty by email. Ms. Smith brought the May 10th PIR to Commissioner Daugherty's attention for his action and direction. She also brought it to the attention of Mr. Zamzow and myself, the other staff members in Commissioner Daugherty's Office.
7. After receipt of the May 10th PIR we began gathering the information in possession of our office that we believed might be responsive to the request for forwarding to the County Attorney's Office for review and response. I searched the office files I maintained, as well as my Travis County-assigned office desktop computer and Travis County email account. I either provided the information to Ms. Smith for forwarding to the County Attorney's Office, or I may have sent the information directly.
8. As I have previously testified, during my tenure as an Executive Assistant for Commissioner Daugherty I do not ever recall using my personal email account to conduct Travis County business. Accordingly, I never searched my personal email account to respond to PIRs.
9. At the time that the office was gathering information responsive to the May 10th PIR I do not recall specifically checking my cell phone for information that would potentially be responsive to the PIR. I don't specifically recall reading the PIR at that time, nor do I recall specifically reading or being aware at the time that the PIR asked for text messages. As I understood it the PIR was requesting information in our possession regarding SH 45 SW.
10. As I also previously testified, to the extent that I have ever used my personal cell phone to send text messages regarding a matter that pertained to Travis County business such use has been very minimal. As I previously testified, to the best of my knowledge I have never texted anyone on my personal cell phone regarding SH 45 SW. Generally, the only County business texting I do on my personal cell phone would be to text Commissioner Daugherty or

another Pct. 3 staff member regarding scheduling matters, e.g., to remind him of a meeting, inquire of his availability for a meeting, or to let someone that I or another meeting attendee was running late. I do not generally text anyone regarding substantive County business. Accordingly, I had no reason to check my cell phone at the time of responding to the May 10th PIR in light of my knowledge of the very limited, non-substantive use of text messages I engage in in the workplace.

11. After the lawsuit was filed, and Commissioner Daugherty was served with written discovery requests, I made a written request to my cell phone carrier service regarding the availability of copies of my text messages for the period requested in the May 10th PIR. I was advised by my carrier that I could not obtain the content of text messages from the carrier for the period requested in the PIR. I provided documentation of this request and the carrier's response in response to the written discovery request in this case.
12. After all of the information that we thought might be responsive was gathered it was forwarded to the County Attorney's Office for review and response. At the time of the May 10th PIR the Assistant County Attorney responsible for handling PIRs was Elizabeth Winn.
13. ACA Winn prepared the response to the PIR and requested an opinion from the Attorney General's Office regarding what information could be withheld under the Public Information Act. ACA Winn produced information in response to the May 10th PIR. As I understand it some information was produced prior to the AG's Office issuing its opinion, and additional information was provided as directed by the AG's Office after the opinion was issued.
14. As I recall it SOS Alliance sent another PIR for information relating to SH 45 SW in November 2013. In response to the November 2013 PIR our office followed the same procedures for response as outlined above.
15. Around the same time as the November 2013 PIR from SOS Alliance I became aware of this lawsuit filed against Commissioner Daugherty relating to the May 10th PIR. The lawsuit was assigned to Assistant County Attorney Tony Nelson for representation.
16. After he was served with this lawsuit Commissioner Daugherty also received written discovery to respond to in connection with the lawsuit. I, along with Commissioner Daugherty and the other members of his staff provided assistance to Assistant County Attorney Nelson in gathering information that we believed to be potentially responsive to the discovery requests for his review and consideration in connection with preparing responses to discovery in this case.
17. As a result of the steps outlined above, to the best of my knowledge, information and belief, I have produced any and all documentation in my custody or control that I had, or currently have access to that is responsive to SOSA's May 10th PIR, regardless of whether the information was on a Travis County device, or a personal device that I used while conducting County business relating to SH 45 SW, unless such information was subject to a specific privilege identified in the Privilege Log submitted by ACA Nelson and/or authorized for

withholding by the AG's Office.

Further Affiant Sayeth Not.

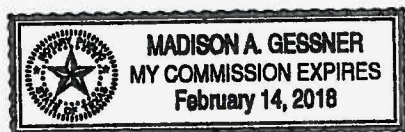

Robert (Bob) Moore

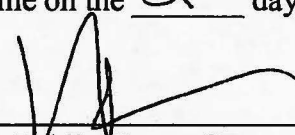
THE STATE OF TEXAS

COUNTY OF TRAVIS

On this day personally appeared the person know to me to be Robert (Bob) Moore who after have been duly sworn stated upon his oath that he is over the age of 21 years and was competent to make an oath, that he had read the above and foregoing Affidavit of Robert (Bob) Moore, that he had personal firsthand knowledge of all facts and matters stated in the above and foregoing Affidavit, that all facts and matters stated therein were true and correct.

SWORN TO AND SUBSCRIBED before me on the 2 day of April, 2015.




Notary Public, State of Texas
My commission expires: 2-14-18

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

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

THE STATE OF TEXAS

COUNTY OF TRAVIS

AFFIDAVIT OF MARTIN ZAMZOW

Before me, the undersigned authority, personally appeared Martin Zamzow, being by me duly sworn, and deposed as follows:

"My name is Martin Zamzow, I am over twenty-one years of age, I am of sound mind and I am authorized to make this affidavit. All the statements contained herein are within my personal knowledge and are true and correct.

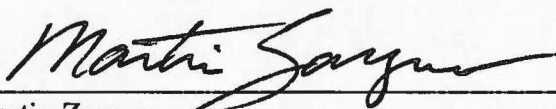
1. From January 1, 2013, to present, I have been employed by Travis County, Texas in the position of Executive Assistant for Travis County Precinct 3 Commissioner Gerald Daugherty. I also previously worked for Commissioner Daugherty in the same position during his previous term as Precinct 3 Commissioner. I have worked continuously for Travis County since March of 2005, with the exception of the period from April of 2012 to December of 2012.
2. I am aware of the lawsuit filed under the Public Information Act against Commissioner Daugherty in his official capacity by the Save Our Spring (SOS) Alliance in connection with a May 10, 2013, request for public information ("PIR") made by SOS Alliance to Commissioner Daugherty's office for information relating to SH 45 SW.
3. In my position as Executive Assistant for Commissioner Daugherty I am responsible for working on, and assisting Commissioner Daugherty on issues involving Travis County and Precinct 3 interests as assigned by the Commissioner. This includes, but is not limited to, constituent relations matters involving various issues. Generally, transportation issues are primarily assigned to my colleague, Executive Assistant Bob Moore. By comparison my work on matters relating to SH 45 SW has been very limited.

4. During my tenure as Commissioner Daugherty's Executive Assistant when Commissioner Daugherty or the Pct. 3 Commissioner's Office would receive a request for information under the Public Information Act (formerly the Open Records Act) the Executive Assistant who served as Commissioner Daugherty's Office Manager and Administrative Assistant was generally responsible for bringing the request to Commissioner Daugherty's attention. At the time of receipt of the May 10th PIR this was Barbara Smith. Ms. Smith retired in January of 2014. Her successor in the position is Madison Gessner. If the PIR was received by one of the other Executive Assistants (Mr. Moore or myself) we would route it to Ms. Smith (now Ms. Gessner) and Commissioner Daugherty for handling.
5. Once a PIR was received by our office, the general procedure that has been followed is to notify the Travis County Attorney's Office of the request, gather whatever information our office had that we believed might be responsive, and forward the information to the County Attorney assigned to handle PIRs for review and preparation of the response.
6. As I recall it, Ms. Smith was the first person to be aware of the May 10, 2013, PIR from SOS Alliance for information pertaining to SH 45 SW. The May 10th PIR was received by Commissioner Daugherty by email. Ms. Smith brought the May 10th PIR to Commissioner Daugherty's attention for his action and direction. She also brought it to the attention of Mr. Moore and myself, the other staff members in Commissioner Daugherty's Office.
7. After receipt of the May 10th PIR we began gathering the information in possession of our office that we believed might be responsive to the request for forwarding to the County Attorney's Office for review and response. I searched the office files I maintained, as well as my Travis County-assigned office desktop computer and Travis County email account. I either provided the information to Ms. Smith for forwarding to the County Attorney's Office, or I may have sent the information directly.
8. During my tenure as an Executive Assistant for Commissioner Daugherty I do not ever recall using my personal email account to conduct Travis County business. Accordingly, I never searched my personal email account to respond to PIRs.
9. I do not send or receive text messages from my personal cell phone for any purpose, business or personal. I do not have a "smart" phone, and have opted out of texting/messaging services with my cell phone carrier. Accordingly, I did not check my cell phone for text messages because there was no need to do so.
10. After all of the information that we thought might be responsive was gathered it was forwarded to the County Attorney's Office for review and response. At the time of the May 10th PIR the Assistant County Attorney responsible for handling PIRs was Elizabeth Winn.
11. ACA Winn prepared the response to the PIR and requested an opinion from the Attorney General's Office regarding what information could be withheld under the Public Information Act. ACA Winn produced information in response to the May 10th PIR. As I understand it

some information was produced prior to the AG's Office issuing its opinion, and additional information was provided as directed by the AG's Office after the opinion was issued.

12. As I recall it SOS Alliance sent another PIR for information relating to SH 45 SW in November 2013. In response to the November 2013 PIR our office followed the same procedures for response as outlined above.
13. Around the same time as the November 2013 PIR from SOS Alliance I became aware of this lawsuit filed against Commissioner Daugherty relating to the May 10th PIR. The lawsuit was assigned to Assistant County Attorney Tony Nelson for representation.
14. After he was served with this lawsuit Commissioner Daugherty also received written discovery to respond to in connection with the lawsuit. I, along with Commissioner Daugherty and the other members of his staff provided assistance to Assistant County Attorney Nelson in gathering information that we believed to be potentially responsive to the discovery requests for his review and consideration in connection with preparing responses to discovery in this case.
15. As a result of the steps outlined above, to the best of my knowledge, information and belief, I have produced any and all documentation in my custody or control that I had, or currently have access to that is responsive to SOSA's May 10th PIR, regardless of whether the information was on a Travis County device, or a personal device that I used while conducting County business relating to SH 45 SW, unless such information was subject to a specific privilege identified in the Privilege Log submitted by ACA Nelson and/or authorized for withholding by the AG's Office.

Further Affiant Sayeth Not.

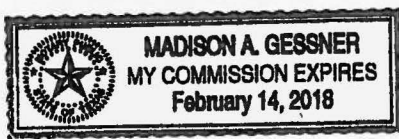

Martin Zamzow

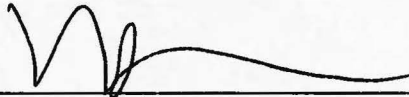
THE STATE OF TEXAS

COUNTY OF TRAVIS

On this day personally appeared the person know to me to be Martin Zamzow who after have been duly sworn stated upon his oath that he is over the age of 21 years and was competent to make an oath, that he had read the above and foregoing Affidavit of Martin Zamzow, that he had personal firsthand knowledge of all facts and matters stated in the above and foregoing Affidavit, that all facts and matters stated therein were true and correct.

SWORN TO AND SUBSCRIBED before me on the 2 day of April, 2015.





Notary Public, State of Texas
My commission expires: 2.14.18

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

SAVE OUR SPRINGS ALLIANCE,
INC.

Plaintiff,

v.

GERALD DAUGHERTY
In His Official Capacity as Travis
County Commissioner for Precinct 3
Defendant.

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IN THE DISTRICT COURT

53RD JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

THE STATE OF TEXAS

COUNTY OF TRAVIS

AFFIDAVIT OF BARBARA SMITH

Before me, the undersigned authority, personally appeared Barbara Smith, being by me duly sworn, and deposed as follows:

"My name is Barbara Smith, I am over twenty-one years of age, I am of sound mind and I am authorized to make this affidavit. All the statements contained herein are within my personal knowledge and are true and correct.

1. From January 1, 2013, until my retirement from my employment with Travis County, Texas on January 15, 2014, I worked for Travis County Precinct 3 Commissioner Gerald Daugherty in the position of Executive Assistant. I had also previously worked for Commissioner Daugherty in the same position during his previous term as Precinct 3 Commissioner.

2. I am aware of the lawsuit filed under the Public Information Act against Commissioner Daugherty in his official capacity by the Save Our Spring (SOS) Alliance in connection with a May 10, 2013, request for public information made by SOS Alliance to Commissioner Daugherty's office for information relating to SH 45 SW. I gave a deposition in this lawsuit on April 17, 2014.

3. In my position as Executive Assistant for Commissioner Daugherty I served as his administrative assistant and office manager, handling most of the administrative, filing, receptionist and general clerical duties for the office. I also managed Commissioner Daugherty's calendar and scheduling.

4. As a part of my duties, I also had proxy access to Commissioner Daugherty's Travis County email account, which I monitored and organized for him. As a part of my monitoring of his County email account I was responsible for assisting him in identifying emails received that required action or his attention, and routing of those emails to the appropriate Executive Assistant within the office working on the matter. If it was a matter that required Commissioner Daugherty's attention I generally printed the email and brought it to his personal attention.

5. During my tenure as Commissioner Daugherty's Executive Assistant when Commissioner Daugherty or the Pct. 3 Commissioner's Office would receive a request for information under the Public Information Act (formerly the Open Records Act) I was generally responsible for bringing the request to Commissioner Daugherty's attention. If the Public Information Request ("PIR") was received by one of the other Executive Assistants (Bob Moore or Martin Zamzow) they would route it to me and Commissioner Daugherty for handling.

6. Once a PIR was received by our office, the general procedure that was followed was to notify the Travis County Attorney's Office of the request, gather whatever information our office had that we believed might be responsive, and forward the information to the County Attorney assigned to handle PIRs for review and preparation of the response.

7. As I recall it, I was the first person to be aware of the May 10, 2013, PIR from SOS Alliance for information pertaining to SH 45 SW. The May 10th PIR was received by Commissioner Daugherty by email. I brought the May 10th PIR to Commissioner Daugherty's attention for his action and direction. I also brought it to the attention of Mr. Moore and Mr. Zamzow, the other staff members in Commissioner Daugherty's Office.

8. After receipt of the May 10th PIR we began gathering the information in possession of our office that we believed might be responsive to the request for forwarding to the County Attorney's Office for review and response. I searched the office files I maintained, as well as my Travis County-assigned office desktop computer and Travis County email account. I reviewed my text messages and had none that were responsive. I also searched the Travis County desktop computer and email account assigned to Commissioner Daugherty and all of the office files I maintained for him. The other two Executive Assistants, Bob Moore and Martin Zamzow, searched their respective assigned Travis County desktop computers and email accounts and any office files they maintained. As I recall it Commissioner Daugherty also searched his home computer for any information that might be responsive and forwarded anything located to me.

9. As I have previously testified, during my tenure as an Executive Assistant for Commissioner Daugherty I do not ever recall using my personal email account to conduct Travis County business. Accordingly, I never searched my personal email account to respond to PIRs.

10. As I also previously testified, I searched my text messages on my personal cell phone for messages that might be responsive to the May 10th PIR. I did not have any text messages regarding SH 45SW. Generally I only texted Commissioner Daugherty regarding scheduling matters, e.g., to remind him of a meeting, inquire of his availability for a meeting, or to let him know someone was running late. I did not generally text him about substantive County business. During my deposition in this lawsuit I provided counsel for SOS Alliance with a copy of all of my text messages to Commissioner Daugherty for the periods in question. None pertained to SH 45 SW.

11. After all of the information that we thought might be responsive was gathered we forwarded it to the County Attorney's Office for review and response. At the time of the May 10th PIR the Assistant County Attorney responsible for handling PIRs was Elizabeth Winn.

12. ACA Winn prepared the response to the PIR and requested an opinion from the Attorney General's Office regarding what information could be withheld under the Public Information Act. ACA Winn produced information in response to the May 10th PIR. As I understand it some information was produced prior to the AG's Office issuing its opinion, and additional information was provided as directed by the AG's Office after the opinion was issued.

13. As I recall it SOS Alliance sent another PIR for information relating to SH 45 SW in November 2013. In response to the November 2013 PIR our office followed the same procedures for response as outlined above.

14. Around the same time as the November 2013 PIR from SOS Alliance I became aware of this lawsuit filed against Commissioner Daugherty relating to the May 10th PIR. The lawsuit was assigned to Assistant County Attorney Tony Nelson for representation.

15. After he was served with this lawsuit Commissioner Daugherty also received written discovery to respond to in connection with the lawsuit. Prior to my retirement I, along with Commissioner Daugherty and the other members of his staff provided assistance to Assistant County Attorney Nelson in gathering information that we believed to be potentially responsive to the discovery requests for his review and consideration in connection with preparing responses to discovery in this case.

16. As a result of the steps outlined above, to the best of my knowledge, information and belief, I have produced any and all documentation in my custody or control that I had, or currently have access to that is responsive to SOSA's May 10th PIR, regardless of whether the information was on a Travis County device, or a personal device that I used while conducting County business relating to SH 45 SW, unless such information was subject to a specific privilege identified in the Privilege Log submitted by ACA Nelson and/or authorized for withholding by the AG's Office.

Further Affiant Sayeth Not.

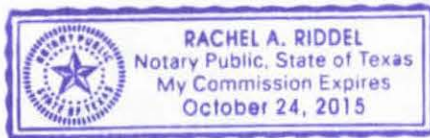
Barbara Smith
Barbara Smith

THE STATE OF TEXAS

COUNTY OF TRAVIS

On this day personally appeared the person know to me to be Barbara Smith who after have been duly sworn stated upon her oath that she is over the age of 21 years and was competent to make an oath, that he had read the above and foregoing Affidavit of Barbara Smith, that she had personal firsthand knowledge of all facts and matters stated in the above and foregoing Affidavit, that all facts and matters stated therein were true and correct.

SWORN TO AND SUBSCRIBED before me on the 1st day of April, 2015.



Rachel Ridgel
Notary Public, State of Texas
My commission expires: 10/24/15

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

**SAVE OUR SPRINGS ALLIANCE,
INC.**

Plaintiff,

v.

**GERALD DAUGHERTY
In His Official Capacity as Travis
County Commissioner for Precinct 3
Defendant.**

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§

IN THE DISTRICT COURT

53RD JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

THE STATE OF TEXAS

COUNTY OF TRAVIS

AFFIDAVIT OF AMY POLLOCK

Before me, the undersigned authority, personally appeared Travis County Attorney's Office Litigation Paralegal Amy Pollock, being by me duly sworn and deposed as follows:

"My name is Amy Pollock, I am over twenty-one years of age, I am of sound mind and I am authorized to make this affidavit. All the statements contained herein are within my personal knowledge and are true and correct.

I am a Litigation Paralegal for the Travis County Attorney's Office (TCAO). I have been an employee of Travis County since 1998. I have been an employee with the Travis County Attorney's Office since February 2006.

I work with Assistant County Attorney Anthony Nelson ('ACA Nelson') who was assigned by Travis County Attorney David Escamilla to represent Travis County Precinct 3 Commissioner Gerald Daugherty in his official capacity in the lawsuit filed against him by Save Our Springs Alliance on November 12, 2013.

As part of my duties as a litigation paralegal, I am responsible for assisting the attorneys I work with in the discovery process in litigation matters. I work under the direction and

supervision of the attorneys assigned by the County Attorney's Office in litigation matters. This includes reviewing and analyzing discovery requests, collecting and reviewing potentially responsive information in response to discovery requests, drafting discovery responses, attending depositions, preparing deposition excerpts and drafting pleadings for the cases to which I am assigned.

As part of my duties I have been assigned as the primary litigation paralegal to assist ACA Nelson on the Save Our Springs Alliance ('SOSA') v. Daugherty lawsuit. In connect with the performance of my duties, under the direction and assistance of ACA Nelson, I have worked extensively on tasks associated with the discovery process, including but not limited to responding to discovery requests from Plaintiff in this case.

In this regard I worked with ACA Nelson and Frank Trevino with the Travis County Information Technology Service (ITS) Department to collect and review the thousands of emails that were identified as potentially responsive to discovery requests. In this regard I was tasked with assisting ACA Nelson determine what information, if any, was responsive to discovery requests served on Commissioner Daugherty and to assist in identifying whether any such responsive information was excepted from disclosure. With respect to emails received or sent by Commissioner Daugherty and his staff that might be responsive to discovery requests in this lawsuit, at the request of ACA Nelson and with the consent of Commissioner Daugherty, ITS ran electronic searches on the individual electronic mailboxes maintained on the Travis County Microsoft Exchange Server for Commissioner Daugherty and his staff. The results of these searches were provided to me and ACA Nelson for our review and use in connection with discovery in this lawsuit.

In assisting ACA Nelson with drafting Commissioner Gerald Daugherty's Objections and Responses to Plaintiff's Request for Production, I reviewed each of the emails that were in the 'IR-9053-Daugherty_Search' search folder created by ITS on January 28, 2014. I reviewed my findings with ACA Nelson. Further, at ACA Nelson's direction, I gathered and reviewed the documentation gathered and produced by Assistant County Attorney Elizabeth Winn in connection with the May 10, 2013, Public Information Act Request and corresponding request for an Attorney General Opinion. To comply with the format production instructions, all responsive non-privileged emails and attachments were then converted to 'PDF' format by utilizing the Outlook Converter Pro software application, I scanned in all responsive documents received from ACA Winn in order to produce them in 'PDF' format, burned onto a compact disc and produced via certified mail return receipt requested to Plaintiff on January 29, 2014.

In drafting Commissioner Gerald Daugherty's Objections and Responses to Plaintiff's Second Request for Production, I reviewed the following: (1) emails in the 'IR-9053-DaughertySearch5-Commissioner' search folder created by ITS on April 7, 2014; and (2) emails in the 'IR-9053-DaughertySearch5-Staff' search folder created by ITS on April 7, 2014. I reviewed my findings with ACA Nelson and Commissioner Gerald Daugherty's Objections and Responses to Plaintiff's Second Request for Production were served on Plaintiff on April 14, 2014.

In drafting Commissioner Gerald Daugherty's First Supplemental Objections and Responses to Plaintiff's Request for Production, I reviewed the following: (1) emails in the 'IR-9053-DaughertySearch2-Commissioner' search folder created by ITS on April 7, 2014; (2) emails in the 'IR-9053-DaughertySearch2-Staff' search folder created by ITS on April 7, 2014; (3) emails in the 'IR-9053-DaughertySearch3-Commissioner' search folder created by ITS on April 7, 2014; (4) emails in the 'IR-9053-DaughertySearch3-Staff' search folder created by ITS

on April 7, 2014; (5) emails in the 'IR-9053-DaughertySearch4-Commissioner' search folder created by ITS on April 7, 2014; (6) emails in the 'IR-9053-DaughertySearch4-Staff' search folder created by ITS on April 7, 2014; (7) emails in the 'IR-9053-DaughertySearch6-Commissioner' search folder created by ITS on April 7, 2014; (8) emails in the 'IR-9053-DaughertySearch6-Staff' search folder created by ITS on April 7, 2014; (9) emails in the 'Daugherty Search 9-Commissioner' search folder created by ITS on August 15, 2014; and (10) emails in the 'Daugherty Search 9-Staff' search folder created by ITS on August 15, 2014. In addition, I again reviewed the emails that were in the 'IR-9053-Daugherty_Search' search folder created by ITS on January 28, 2014, in order to ensure all responsive emails were produced in our previous response to Plaintiff's Request for Production. At the direction of ACA Nelson and with the consent of Commissioner Daugherty, certain documents that had previously been withheld and/or produced in redacted format pursuant to the July 30, 2013 Attorney General Open Records Opinion were release and produced to Plaintiff in unredacted format. I reviewed my findings with ACA Nelson. In order to comply with the format production instructions, all responsive non-privileged emails and attachments were then converted to 'PDF' format by utilizing PDF Portfolio and AutoPortfolio Plug-In software application, burned onto a compact disc and produced via hand delivery on August 26, 2014.

In drafting Travis County's Objections to Plaintiff's Subpoena Duces Tecum served on Defendant in connection with Plaintiff's deposition of Travis County's designated representatives on August 26, 2014, I reviewed the following: (1) emails in the 'IR-9053-DaughertySearch2-Commissioner' search folder created by ITS on April 7, 2014; (2) emails in the 'IR-9053-DaughertySearch2-Staff' search folder created by ITS on April 7, 2014; (3) emails in the 'IR-9053-DaughertySearch3- Commissioner' search folder created by ITS on April 7,


2014; (4) emails in the 'IR-9053-DaughertySearch3-Staff' search folder created by ITS on April 7, 2014; (5) emails in the 'IR-9053-DaughertySearch4-Commissioner' search folder created by ITS on April 7, 2014; (6) emails in the 'IR-9053-DaughertySearch4-Staff' search folder created by ITS on April 7, 2014; (7) emails in the 'IR-9053-DaughertySearch6-Commissioner' search folder created by ITS on April 7, 2014; (8) emails in the 'IR-9053-DaughertySearch6-Staff' search folder created by ITS on April 7, 2014; (9) emails in the 'Daugherty Search 7-Commissioner' search folder created by ITS on August 14, 2014; (10) emails in the 'Daugherty Search 7-Staff' search folder created by ITS on August 14, 2014; (11) emails in the 'Daugherty Search 8-Commissioner' search folder created by ITS on August 14, 2014; (12) emails in the 'Daugherty Search 8-Staff' search folder created by ITS on August 14, 2014; (13) emails in the 'Daugherty Search 9-Commissioner' search folder created by ITS on August 15, 2014; (14) emails in the 'Daugherty Search 9-Staff' search folder created by ITS on August 15, 2014. In addition, I again reviewed the emails that were in the 'IR-9053-Daugherty_Search' search folder created by ITS on January 28, 2014, in order to ensure all responsive emails were produced. I reviewed my findings with ACA Nelson. In order to comply with the format production instructions, all responsive non-privileged emails and attachments were then converted to 'PDF' format by utilizing PDF Portfolio and AutoPortfolio Plug-In software application, burned onto a compact disc and produced via hand delivery on August 26, 2014.

In response to Plaintiff's Request for Defendant's Privilege Log served September 15, 2014, I reviewed all of the documentation previously produced in discovery in this case and prepared a draft of the privilege log. At the direction of ACA Nelson, the privilege log contained notations referencing by bates stamp number the specific produced on August 26, 2014, in unredacted format that had previously been withheld and/or produced in redacted format. I

reviewed my findings with ACA Nelson. Plaintiff was e-served with a copy of the privilege log on October 1, 2014.

Attached hereto as **Attachment A** to my affidavit are true and correct copies of the Search Results Summary for each of the searches performed by ITS referenced in my affidavit.”

Further Affiant Sayeth Not.



Amy Pollock
Litigation Paralegal
Travis County Attorney's Office

THE STATE OF TEXAS

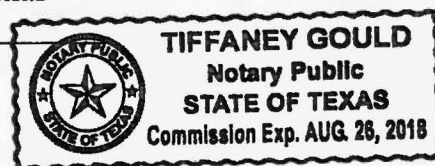
COUNTY OF TRAVIS

On this day personally appeared the person know to me to be Amy Pollock who after have been duly sworn stated upon her oath that she is over the age of 21 years and was competent to make an oath, that he had read the above and foregoing Affidavit of Amy Pollock, that she had personal firsthand knowledge of all facts and matters stated in the above and foregoing Affidavit, that all facts and matters stated therein were true and correct.

SWORN TO AND SUBSCRIBED before me on the 8th day of April, 2015.



Notary Public, State of Texas
My commission expires:



Amy Pollock

Sent: Tuesday, January 28, 2014 1:59 PM
Subject: IR-9053-Daugherty_Search-1/28/2014 1:57:28 PM

The search 'IR-9053-Daugherty_Search' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 1/28/2014 1:57:28 PM
End Time: 1/28/2014 1:59:19 PM
Size: 127.5 MB (133,727,741 bytes), Estimated size was: 148.9 MB (156,167,019 bytes)
Items: 375, Estimated number of items was: 487 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:

Keyword	Hits	Mailboxes
SH 45	195	4
SH 45 SW	34	4
State Highway 45	17	2
State Highway 45 Southwest	4	1
Manchaca Expressway	0	0

Identity: 9a941b11-cf57-4991-94cf-c4ac0101229f
Created by: TRAVIS\frank.trevino
Query: ("SH 45" OR "SH 45 SW") OR ("State Highway 45" OR "State Highway 45 Southwest") OR ("Manchaca Expressway")
Senders: All
Recipients: All
Start Date: 1/23/2013 12:00:00 AM, -6
End Date: 5/10/2013 1:00:59 AM, -5
Message Types: email
Search Dumpster: True
Logging: Basic
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (5) travis\SmithB, travis\MooreB1, travis\DaugheG, travis\GessneM, travis\ZamzowM
Mailboxes searched successfully: (5) travis\GessneM, travis\ZamzowM, travis\SmithB, travis\DaugheG, travis\MooreB1
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Sent by Microsoft Exchange Server 2010.

Amy Pollock

Sent: Monday, April 07, 2014 9:05 AM
Subject: IR-9053-DaughertySearch2-Commissioner-4/7/2014 9:04:27 AM
Attachments: IR-9053-DaughertySearch2-Commissioner.csv.zip

The search 'IR-9053-DaughertySearch2-Commissioner' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:04:27 AM
End Time: 4/7/2014 9:06:15 AM
Size: 16.55 MB (17,352,533 bytes), Estimated size was: 18.98 MB (19,904,694 bytes)
Items: 307, Estimated number of items was: 358 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None
Keyword Hits:

Keyword	Hits	Mailboxes
SH 45	147	1
State Highway 45	16	1
SH 45 SW	6	1
State Highway 45 Southwest	4	1
Manchaca Expressway	0	0

Identity: a1c5eeae-44da-4bea-9472-287ac883e379
Created by: TRAVIS\frank.trevino
Query: ("SH 45" OR "SH 45 SW") OR ("State Highway 45" OR "State Highway 45 Southwest") OR ("Manchaca Expressway")
Senders: All
Recipients: All
Start Date: 1/22/2013 11:00:00 PM, -6
End Date: 5/11/2013 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (1) travis\DaugheG
Mailboxes searched successfully: (1) travis\DaugheG
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Amy Pollock

Sent: Monday, April 07, 2014 9:23 AM
Subject: IR-9053-DaughertySearch2-Commissioner-4/7/2014 9:22:43 AM
Attachments: IR-9053-DaughertySearch2-Commissioner.csv.zip

The search 'IR-9053-DaughertySearch2-Commissioner' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:22:43 AM
End Time: 4/7/2014 9:24:45 AM
Size: 39.96 MB (41,902,777 bytes), Estimated size was: 58.66 MB (61,512,322 bytes)
Items: 1020, Estimated number of items was: 1234 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None
Keyword Hits:

Keyword	Hits	Mailboxes
SH 45	1090	1
SH 45 SW	721	1
State Highway 45	119	1
State Highway 45 Southwest	76	1
Manchaca Expressway	25	1

Identity: a1c5eeae-44da-4bea-9472-287ac883e379
Created by: TRAVIS\frank.trevino
Query: ("SH 45" OR "SH 45 SW") OR ("State Highway 45" OR "State Highway 45 Southwest") OR ("Manchaca Expressway")
Senders: All
Recipients: All
Start Date: 5/11/2013 12:00:00 AM, -5
End Date: 4/7/2014 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (1) travis\DaugheG
Mailboxes searched successfully: (1) travis\DaugheG
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Amy Pollock

Sent: Monday, April 07, 2014 9:01 AM
Subject: IR-9053-DaughertySearch2-Staff-4/7/2014 8:59:38 AM
Attachments: IR-9053-DaughertySearch2-Staff.csv.zip

The search 'IR-9053-DaughertySearch2-Staff' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 8:59:38 AM
End Time: 4/7/2014 9:01:37 AM
Size: 126.4 MB (132,553,743 bytes), Estimated size was: 154.2 MB (161,642,294 bytes)
Items: 200, Estimated number of items was: 281 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:

Keyword	Hits	Mailboxes
SH 45	46	3
SH 45 SW	27	3
State Highway 45	1	1
Manchaca Expressway	0	0
State Highway 45 Southwest	0	0

Identity: 23393c1a-c15b-432a-ab5c-62e82f56a69c
Created by: TRAVIS\frank.trevino
Query: ("SH 45" OR "SH 45 SW") OR ("State Highway 45" OR "State Highway 45 Southwest") OR ("Manchaca Expressway")
Senders: All
Recipients: All
Start Date: 1/22/2013 11:00:00 PM, -6
End Date: 5/11/2013 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (4) travis\SmithB, travis\MooreB1, travis\GessneM, travis\ZamzowM
Mailboxes searched successfully: (4) travis\GessneM, travis\ZamzowM, travis\SmithB, travis\MooreB1
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Amy Pollock

Sent: Monday, April 07, 2014 9:23 AM
Subject: IR-9053-DaughertySearch2-Staff-4/7/2014 9:22:23 AM
Attachments: IR-9053-DaughertySearch2-Staff.csv.zip

The search 'IR-9053-DaughertySearch2-Staff' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:22:23 AM
End Time: 4/7/2014 9:24:37 AM
Size: 240.9 MB (252,615,353 bytes), Estimated size was: 281.5 MB (295,219,385 bytes)
Items: 919, Estimated number of items was: 1069 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:

Keyword	Hits	Mailboxes
SH 45	940	4
SH 45 SW	799	4
State Highway 45	102	4
State Highway 45 Southwest	72	4
Manchaca Expressway	49	4

Identity: 23393c1a-c15b-432a-ab5c-62e82f56a69c
Created by: TRAVIS\frank.trevino
Query: ("SH 45" OR "SH 45 SW") OR ("State Highway 45" OR "State Highway 45 Southwest") OR ("Manchaca Expressway")
Senders: All
Recipients: All
Start Date: 5/11/2013 12:00:00 AM, -5
End Date: 4/7/2014 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (4) travis\SmithB, travis\MooreB1, travis\GessneM, travis\ZamzowM
Mailboxes searched successfully: (4) travis\GessneM, travis\ZamzowM, travis\SmithB, travis\MooreB1
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Amy Pollock

Sent: Monday, April 07, 2014 9:08 AM
Subject: IR-9053-DaughertySearch3-Commissioner-4/7/2014 9:08:20 AM
Attachments: IR-9053-DaughertySearch3-Commissioner.csv.zip

The search 'IR-9053-DaughertySearch3-Commissioner' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:08:20 AM
End Time: 4/7/2014 9:08:30 AM
Size: 2.909 MB (3,049,967 bytes), Estimated size was: 4.115 MB (4,314,763 bytes)
Items: 4, Estimated number of items was: 12 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:	Keyword	Hits	Mailboxes
	("SH45" or "SH45SW") ("45 SW" or "45SW")	12	1

Identity: 11da515a-94d9-44c0-a0de-a79723e010e7
Created by: TRAVIS\frank.trevino
Query: ("SH45" or "SH45SW") ("45 SW" or "45SW")
Senders: All
Recipients: All
Start Date: 1/22/2013 11:00:00 PM, -6
End Date: 5/10/2013 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (1) travis\DaugheG
Mailboxes searched successfully: (1) travis\DaugheG
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Sent by Microsoft Exchange Server 2010.

Amy Pollock

Sent: Monday, April 07, 2014 9:30 AM
Subject: IR-9053-DaughertySearch3-Commissioner-4/7/2014 9:29:39 AM
Attachments: IR-9053-DaughertySearch3-Commissioner.csv.zip

The search 'IR-9053-DaughertySearch3-Commissioner' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:29:39 AM
End Time: 4/7/2014 9:31:52 AM
Size: 54.95 MB (57,615,879 bytes), Estimated size was: 96.49 MB (101,173,930 bytes)
Items: 1304, Estimated number of items was: 1555 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:

Keyword	Hits	Mailboxes
SH45	173	1
45SW	17	1
45 SW	15	1
SH45SW	1	1

Identity: 11da515a-94d9-44c0-a0de-a79723e010e7
Created by: TRAVIS\frank.trevino
Query: ("SH45" OR "SH45SW") OR ("45 SW" OR "45SW")
Senders: All
Recipients: All
Start Date: 1/22/2013 11:00:00 PM, -6
End Date: 5/10/2013 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (1) travis\DaugheG
Mailboxes searched successfully: (1) travis\DaugheG
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Amy Pollock

Sent: Monday, April 07, 2014 9:14 AM
Subject: IR-9053-DaughertySearch3-Staff-4/7/2014 9:14:18 AM
Attachments: IR-9053-DaughertySearch3-Staff.csv.zip

The search 'IR-9053-DaughertySearch3-Staff' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:14:18 AM
End Time: 4/7/2014 9:14:33 AM
Size: 3.27 MB (3,429,112 bytes), Estimated size was: 3.288 MB (3,447,551 bytes)
Items: 7, Estimated number of items was: 8 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:	Keyword	Hits	Mailboxes
	("SH45" or "SH45SW") ("45 SW" or "45SW")	8	1

Identity: b0babd01-0d87-4a9d-b87f-9f90b7591754
Created by: TRAVIS\frank.trevino
Query: ("SH45" or "SH45SW") ("45 SW" or "45SW")
Senders: All
Recipients: All
Start Date: 1/22/2013 11:00:00 PM, -6
End Date: 5/10/2013 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (4) travis\SmithB, travis\MooreB1, travis\GessneM, travis\ZamzowM
Mailboxes searched successfully: (4) travis\ZamzowM, travis\GessneM, travis\SmithB, travis\MooreB1
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Sent by Microsoft Exchange Server 2010.

Amy Pollock

Sent: Monday, April 07, 2014 9:30 AM
Subject: IR-9053-DaughertySearch3-Staff-4/7/2014 9:29:30 AM
Attachments: IR-9053-DaughertySearch3-Staff.csv.zip

The search 'IR-9053-DaughertySearch3-Staff' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:29:30 AM
End Time: 4/7/2014 9:31:32 AM
Size: 164.3 MB (172,331,346 bytes), Estimated size was: 174.1 MB (182,513,176 bytes)
Items: 1098, Estimated number of items was: 1257 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:

Keyword	Hits	Mailboxes
SH45	50	3
45 SW	34	3
45SW	26	3
SH45SW	3	2

Identity: b0babd01-0d87-4a9d-b87f-9f90b7591754
Created by: TRAVIS\frank.trevino
Query: ("SH45" OR "SH45SW") OR ("45 SW" OR "45SW")
Senders: All
Recipients: All
Start Date: 1/22/2013 11:00:00 PM, -6
End Date: 5/10/2013 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (4) travis\SmithB, travis\MooreB1, travis\GessneM, travis\ZamzowM
Mailboxes searched successfully: (4) travis\GessneM, travis\ZamzowM, travis\SmithB, travis\MooreB1
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Amy Pollock

Sent: Monday, April 07, 2014 9:18 AM
Subject: IR-9053-DaughertySearch4-Commissioner-4/7/2014 9:17:54 AM
Attachments: IR-9053-DaughertySearch4-Commissioner.csv.zip

The search 'IR-9053-DaughertySearch4-Commissioner' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:17:54 AM
End Time: 4/7/2014 9:18:04 AM
Size: 2.909 MB (3,049,967 bytes), Estimated size was: 4.115 MB (4,314,763 bytes)
Items: 4, Estimated number of items was: 12 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:	Keyword	Hits	Mailboxes
	("SH45" or "SH45SW") ("45 SW" or "45SW")	12	1

Identity: 24ff637f-8331-4df3-aa6a-2de16722408b
Created by: TRAVIS\frank.trevino
Query: ("SH45" or "SH45SW") ("45 SW" or "45SW")
Senders: All
Recipients: All
Start Date: 1/22/2013 11:00:00 PM, -6
End Date: 5/11/2013 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (1) travis\DaugheG
Mailboxes searched successfully: (1) travis\DaugheG
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Sent by Microsoft Exchange Server 2010.

Amy Pollock

Sent: Monday, April 07, 2014 9:25 AM
Subject: IR-9053-DaughertySearch4-Commissioner-4/7/2014 9:23:48 AM
Attachments: IR-9053-DaughertySearch4-Commissioner.csv.zip

The search 'IR-9053-DaughertySearch4-Commissioner' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:23:48 AM
End Time: 4/7/2014 9:25:21 AM
Size: 9.892 MB (10,372,642 bytes), Estimated size was: 11.14 MB (11,685,763 bytes)
Items: 541, Estimated number of items was: 614 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:	Keyword	Hits	Mailboxes
	("SH45" or "SH45SW") ("45 SW" or "45SW")	614	1

Identity: 24ff637f-8331-4df3-aa6a-2de16722408b
Created by: TRAVIS\frank.trevino
Query: ("SH45" or "SH45SW") ("45 SW" or "45SW")
Senders: All
Recipients: All
Start Date: 5/11/2013 12:00:00 AM, -5
End Date: 4/7/2014 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (1) travis\DaugheG
Mailboxes searched successfully: (1) travis\DaugheG
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Sent by Microsoft Exchange Server 2010.

Amy Pollock

Sent: Monday, April 07, 2014 9:27 AM
Subject: IR-9053-DaughertySearch4-Commissioner-4/7/2014 9:26:59 AM
Attachments: IR-9053-DaughertySearch4-Commissioner.csv.zip

The search 'IR-9053-DaughertySearch4-Commissioner' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:26:59 AM
End Time: 4/7/2014 9:29:10 AM
Size: 57.24 MB (60,020,172 bytes), Estimated size was: 104.7 MB (109,777,173 bytes)
Items: 1520, Estimated number of items was: 1816 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None
Keyword Hits:

Keyword	Hits	Mailboxes
SH45	955	1
45 SW	778	1
45SW	94	1
SH45SW	92	1

Identity: 24ff637f-8331-4df3-aa6a-2de16722408b
Created by: TRAVIS\frank.trevino
Query: ("SH45" OR "SH45SW") OR ("45 SW" OR "45SW")
Senders: All
Recipients: All
Start Date: 5/11/2013 12:00:00 AM, -5
End Date: 4/7/2014 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (1) travis\DaugheG
Mailboxes searched successfully: (1) travis\DaugheG
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Amy Pollock

Sent: Monday, April 07, 2014 9:21 AM
Subject: IR-9053-DaughertySearch4-Staff-4/7/2014 9:20:53 AM
Attachments: IR-9053-DaughertySearch4-Staff.csv.zip

The search 'IR-9053-DaughertySearch4-Staff' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:20:53 AM
End Time: 4/7/2014 9:21:07 AM
Size: 3.27 MB (3,429,112 bytes), Estimated size was: 3.288 MB (3,447,551 bytes)
Items: 7, Estimated number of items was: 8 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:	Keyword	Hits	Mailboxes
	("SH45" or "SH45SW") ("45 SW" or "45SW")	8	1

Identity: c3583521-4bfb-46c9-b44e-4ec0f3fe9abc
Created by: TRAVIS\frank.trevino
Query: ("SH45" or "SH45SW") ("45 SW" or "45SW")
Senders: All
Recipients: All
Start Date: 1/22/2013 11:00:00 PM, -6
End Date: 5/11/2013 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (4) travis\SmithB, travis\MooreB1, travis\GessneM, travis\ZamzowM
Mailboxes searched successfully: (4) travis\GessneM, travis\ZamzowM, travis\SmithB, travis\MooreB1
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Sent by Microsoft Exchange Server 2010.

Amy Pollock

Sent: Monday, April 07, 2014 9:25 AM
Subject: IR-9053-DaughertySearch4-Staff-4/7/2014 9:23:29 AM
Attachments: IR-9053-DaughertySearch4-Staff.csv.zip

The search 'IR-9053-DaughertySearch4-Staff' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:23:29 AM
End Time: 4/7/2014 9:25:11 AM
Size: 101.4 MB (106,277,167 bytes), Estimated size was: 108.1 MB (113,309,798 bytes)
Items: 672, Estimated number of items was: 696 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:	Keyword	Hits	Mailboxes
	("SH45" or "SH45SW") ("45 SW" or "45SW")	696	4

Identity: c3583521-4bfb-46c9-b44e-4ec0f3fe9abc
Created by: TRAVIS\frank.trevino
Query: ("SH45" or "SH45SW") ("45 SW" or "45SW")
Senders: All
Recipients: All
Start Date: 5/11/2013 12:00:00 AM, -5
End Date: 4/7/2014 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (4) travis\SmithB, travis\MooreB1, travis\GessneM, travis\ZamzowM
Mailboxes searched successfully: (4) travis\ZamzowM, travis\GessneM, travis\SmithB, travis\MooreB1
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Sent by Microsoft Exchange Server 2010.

Amy Pollock

Sent: Monday, April 07, 2014 9:28 AM
Subject: IR-9053-DaughertySearch4-Staff-4/7/2014 9:27:07 AM
Attachments: IR-9053-DaughertySearch4-Staff.csv.zip

The search 'IR-9053-DaughertySearch4-Staff' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:27:07 AM
End Time: 4/7/2014 9:29:28 AM
Size: 196.7 MB (206,302,753 bytes), Estimated size was: 210.1 MB (220,276,429 bytes)
Items: 1217, Estimated number of items was: 1412 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None
Keyword Hits:

Keyword	Hits	Mailboxes
45 SW	894	4
SH45	829	4
45SW	143	4
SH45SW	119	4

Identity: c3583521-4bfb-46c9-b44e-4ec0f3fe9abc
Created by: TRAVIS\frank.trevino
Query: ("SH45" OR "SH45SW") OR ("45 SW" OR "45SW")
Senders: All
Recipients: All
Start Date: 5/11/2013 12:00:00 AM, -5
End Date: 4/7/2014 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (4) travis\SmithB, travis\MooreB1, travis\GessneM, travis\ZamzowM
Mailboxes searched successfully: (4) travis\GessneM, travis\SmithB, travis\ZamzowM, travis\MooreB1
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Amy Pollock

Sent: Monday, April 07, 2014 9:29 AM
Subject: IR-9053-DaughertySearch5-Commissioner-4/7/2014 9:28:49 AM
Attachments: IR-9053-DaughertySearch5-Commissioner.csv.zip

The search 'IR-9053-DaughertySearch5-Commissioner' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:28:49 AM
End Time: 4/7/2014 9:29:39 AM
Size: 5.45 MB (5,714,917 bytes), Estimated size was: 5.576 MB (5,847,178 bytes)
Items: 35, Estimated number of items was: 44 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None
Keyword Hits:

Keyword	Hits	Mailboxes
Walters	44	1
Bill Walters	9	1

Identity: 40181124-5bd8-429b-931a-bd4410700461
Created by: TRAVIS\frank.trevino
Query: ("Bill Walters" OR "Walters")
Senders: All
Recipients: All
Start Date: 1/22/2013 11:00:00 PM, -6
End Date: 4/7/2014 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (1) travis\DaugheG
Mailboxes searched successfully: (1) travis\DaugheG
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Amy Pollock

Sent: Monday, April 07, 2014 9:27 AM
Subject: IR-9053-DaughertySearch5-Staff-4/7/2014 9:26:32 AM
Attachments: IR-9053-DaughertySearch5-Staff.csv.zip

The search 'IR-9053-DaughertySearch5-Staff' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:26:32 AM
End Time: 4/7/2014 9:27:18 AM
Size: 60.66 MB (63,604,437 bytes), Estimated size was: 60.62 MB (63,562,958 bytes)
Items: 53, Estimated number of items was: 75 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None
Keyword Hits:

Keyword	Hits	Mailboxes
Walters	75	4
Bill Walters	27	3

Identity: 5abf78d6-35b8-4a2f-9a40-25e52036a92d
Created by: TRAVIS\frank.trevino
Query: ("Bill Walters" OR "Walters")
Senders: All
Recipients: All
Start Date: 1/22/2013 11:00:00 PM, -6
End Date: 4/7/2014 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (4) travis\SmithB, travis\MooreB1, travis\GessneM, travis\ZamzowM
Mailboxes searched successfully: (4) travis\GessneM, travis\SmithB, travis\ZamzowM, travis\MooreB1
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Amy Pollock

Sent: Monday, April 07, 2014 9:32 AM
Subject: IR-9053-DaughertySearch6-Commissioner-4/7/2014 9:31:05 AM
Attachments: IR-9053-DaughertySearch6-Commissioner.csv.zip

The search 'IR-9053-DaughertySearch6-Commissioner' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:31:05 AM
End Time: 4/7/2014 9:31:53 AM
Size: 1.545 MB (1,620,071 bytes), Estimated size was: 4.332 MB (4,542,026 bytes)
Items: 35, Estimated number of items was: 134 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None
Keyword Hits:

Keyword	Hits	Mailboxes
Narvaiz	134	1
Susan Narvaiz	130	1

Identity: 54b2a491-5fbc-44b7-bb0c-5f147d24df33
Created by: TRAVIS\frank.trevino
Query: ("Susan Narvaiz" OR "Narvaiz")
Senders: All
Recipients: All
Start Date: 5/10/2013 12:00:00 AM, -5
End Date: 4/7/2014 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (1) travis\DaugheG
Mailboxes searched successfully: (1) travis\DaugheG
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Sent by Microsoft Exchange Server 2010.

Amy Pollock

Sent: Monday, April 07, 2014 9:34 AM
Subject: IR-9053-DaughertySearch6-Staff-4/7/2014 9:33:55 AM
Attachments: IR-9053-DaughertySearch6-Staff.csv.zip

The search 'IR-9053-DaughertySearch6-Staff' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 4/7/2014 9:33:55 AM
End Time: 4/7/2014 9:34:34 AM
Size: 90.59 MB (94,991,679 bytes), Estimated size was: 93.08 MB (97,596,730 bytes)
Items: 67, Estimated number of items was: 102 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None
Keyword Hits:

Keyword	Hits	Mailboxes
Narvaiz	102	4
Susan Narvaiz	100	4

Identity: 5bbb2bc7-6b09-4410-9b58-b37683d7c7d2
Created by: TRAVIS\frank.trevino
Query: ("Susan Narvaiz" OR "Narvaiz")
Senders: All
Recipients: All
Start Date: 5/10/2013 12:00:00 AM, -5
End Date: 4/7/2014 11:59:59 PM, -5
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (4) travis\SmithB, travis\MooreB1, travis\GessneM, travis\ZamzowM
Mailboxes searched successfully: (4) travis\GessneM, travis\ZamzowM, travis\SmithB, travis\MooreB1
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Amy Pollock

Sent: Thursday, August 14, 2014 2:36 PM
Subject: Daugherty Search 7-Commissioner-8/14/2014 2:36:06 PM

The search 'Daugherty Search 7-Commissioner' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 8/14/2014 2:36:06 PM
End Time: 8/14/2014 2:36:13 PM
Size: 0 B (0 bytes), Estimated size was: 0 B (0 bytes)
Items: 0, Estimated number of items was: 0 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:	Keyword	Hits	Mailboxes
	("retention of public information")	0	0

Identity: 06ba2e58-9350-475c-8780-f1f8c84cba30
Created by: TRAVIS\TrevinF
Query: ("retention of public information")
Senders: All
Recipients: All
Start Date: Blank
End Date: Blank
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (1) travis\DaugheG
Mailboxes searched successfully: (1) travis\DaugheG
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Sent by Microsoft Exchange Server 2010.

Amy Pollock

Sent: Thursday, August 14, 2014 2:37 PM
Subject: Daugherty Search 7-Staff-8/14/2014 2:37:08 PM

The search 'Daugherty Search 7-Staff' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 8/14/2014 2:37:08 PM
End Time: 8/14/2014 2:37:21 PM
Size: 0 B (0 bytes), Estimated size was: 0 B (0 bytes)
Items: 0, Estimated number of items was: 0 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:

Keyword	Hits	Mailboxes
("retention of public information")	0	0

Identity: daebd0c5-f15b-494c-b165-135499b2b8f7
Created by: TRAVIS\TrevinF
Query: ("retention of public information")
Senders: All
Recipients: All
Start Date: Blank
End Date: Blank
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (4) travis\SmithB, travis\GessneM, travis\ZamzowM, travis\MooreR1
Mailboxes searched successfully: (4) travis\GessneM, travis\MooreR1, travis\SmithB, travis\ZamzowM
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Sent by Microsoft Exchange Server 2010.

Amy Pollock

Sent: Thursday, August 14, 2014 2:47 PM
Subject: Daugherty Search 8-Commissioner-8/14/2014 2:46:35 PM
Attachments: Daugherty Search 8-Commissioner.csv.zip

The search 'Daugherty Search 8-Commissioner' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 8/14/2014 2:46:35 PM
End Time: 8/14/2014 2:46:47 PM
Size: 19.21 MB (20,147,138 bytes), Estimated size was: 21.07 MB (22,093,036 bytes)
Items: 19, Estimated number of items was: 21 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None
Keyword Hits:

Keyword	Hits	Mailboxes
("retention" AND "public information")	21	1

Identity: 2b083e7d-feb3-4f70-b7e7-7e5e88695da2
Created by: TRAVIS\TrevinF
Query: ("retention" AND "public information")
Senders: All
Recipients: All
Start Date: Blank
End Date: Blank
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (1) travis\DaugheG
Mailboxes searched successfully: (1) travis\DaugheG
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Sent by Microsoft Exchange Server 2010.

Amy Pollock

Sent: Thursday, August 14, 2014 2:48 PM
Subject: Daugherty Search 8-Staff-8/14/2014 2:47:38 PM
Attachments: Daugherty Search 8-Staff.csv.zip

The search 'Daugherty Search 8-Staff' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 8/14/2014 2:47:38 PM
End Time: 8/14/2014 2:47:52 PM
Size: 30.04 MB (31,502,731 bytes), Estimated size was: 30.04 MB (31,502,535 bytes)
Items: 8, Estimated number of items was: 8 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:	Keyword	Hits	Mailboxes
	("retention" AND "public information")	8	2

Identity: e87d958e-16ba-4250-b5d1-ac4b1cd6d345
Created by: TRAVIS\TrevinF
Query: ("retention" AND "public information")
Senders: All
Recipients: All
Start Date: Blank
End Date: Blank
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (4) travis\SmithB, travis\GessneM, travis\ZamzowM, travis\MooreR1
Mailboxes searched successfully: (4) travis\MooreR1, travis\GessneM, travis\ZamzowM, travis\SmithB
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Sent by Microsoft Exchange Server 2010.

Amy Pollock

Sent: Friday, August 15, 2014 1:21 PM
Subject: Daugherty Search 9-Commissioner-8/15/2014 1:19:44 PM
Attachments: Daugherty Search 9-Commissioner.csv.zip

The search 'Daugherty Search 9-Commissioner' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 8/15/2014 1:19:44 PM
End Time: 8/15/2014 1:24:17 PM
Size: 230 MB (241,162,428 bytes), Estimated size was: 342.5 MB (359,171,770 bytes)
Items: 3169, Estimated number of items was: 3662 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:	Keyword	Hits	Mailboxes
	SH 45	2470	1
	SH45	2286	1
	45 SW	1993	1
	SH 45 SW	1912	1
	45SW	178	1
	State Highway 45	173	1
	SH45SW	161	1
	State Highway 45 Southwest	109	1
	Manchaca Expressway	31	1

Identity: 7eaaa561-6125-40e5-8da1-02c0738790ae
Created by: TRAVIS\trevinf
Query: ("SH 45" OR "SH 45 SW") OR ("State Highway 45" OR "State Highway 45 Southwest") OR ("Manchaca Expressway") OR ("SH45" OR "SH45SW") OR ("45 SW" OR "45SW")
Senders: All
Recipients: All
Start Date: 1/1/2013 12:00:00 AM, -6
End Date: Blank
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (1) travis\DaugheG
Mailboxes searched successfully: (1) travis\DaugheG
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Sent by Microsoft Exchange Server 2010.

Amy Pollock

Sent: Friday, August 15, 2014 1:22 PM
Subject: Daugherty Search 9-Staff-8/15/2014 1:21:11 PM
Attachments: Daugherty Search 9-Staff.csv.zip

The search 'Daugherty Search 9-Staff' has 'Search Succeeded'.

Percent Complete: 100%
Started by: Frank Trevino
Stopped by: N/A
Start Time: 8/15/2014 1:21:11 PM
End Time: 8/15/2014 1:24:26 PM
Size: 506.3 MB (530,874,997 bytes), Estimated size was: 551.3 MB (578,090,068 bytes)
Items: 1035, Estimated number of items was: 1145 (Estimates don't exclude duplicates)
Results: travis\TCA-TonyNelson-SearchResults
Errors: None

Keyword Hits:	Keyword	Hits	Mailboxes
	SH 45	833	4
	45 SW	786	4
	SH45	778	4
	SH 45 SW	723	4
	State Highway 45	99	4
	State Highway 45 Southwest	86	4
	SH45SW	83	3
	45SW	72	3
	Manchaca Expressway	33	3

Identity: 576faec5-728d-42b1-bb95-275745c6df84
Created by: TRAVIS\trevinf
Query: ("SH 45" OR "SH 45 SW") OR ("State Highway 45" OR "State Highway 45 Southwest") OR ("Manchaca Expressway") OR ("SH45" OR "SH45SW") OR ("45 SW" OR "45SW")
Senders: All
Recipients: All
Start Date: 1/1/2013 12:00:00 AM, -6
End Date: Blank
Message Types: email
Search Dumpster: True
Logging: Full
Exclude Duplicate Messages: True
Email Notification: None
Mailboxes to search: (4) travis\SmithB, travis\GessneM, travis\ZamzowM, travis\MooreR1
Mailboxes searched successfully: (4) travis\MooreR1, travis\GessneM, travis\SmithB, travis\ZamzowM
Mailboxes not searched successfully: (0) None
Resume: False

See attachments for additional logging information when full logging is enabled.

Sent by Microsoft Exchange Server 2010.

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

**SAVE OUR SPRINGS ALLIANCE,
INC.**

Plaintiff,

v.

**GERALD DAUGHERTY
In His Official Capacity as Travis
County Commissioner for Precinct 3
Defendant.**

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IN THE DISTRICT COURT

53RD JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

THE STATE OF TEXAS

COUNTY OF TRAVIS

AFFIDAVIT OF FRANK TREVINO

Before me, the undersigned authority, personally appeared Systems Engineer III Frank Trevino, Travis County's Department of Information Technology Service, being by me duly sworn, and deposed as follows:

"My name is Frank Trevino, I am over twenty-one years of age, I am of sound mind, and I am authorized to make this affidavit. All the statements contained herein are within my personal knowledge and are true and correct.

1. "I am a Systems Engineer III for the Travis County Department of Information Technology Service (ITS). I have been an employee of ITS for 5 years 8 months. I hold the certifications/qualifications listed in *Attachment A* in connection with my employment."
2. "Part of the duties of ITS is to maintain the servers for the Travis County computer network. Travis County utilizes Microsoft Exchange Server with Microsoft Outlook Clients for the county's email accounts. Previously Travis County utilized Groupwise for its email system. Travis County migrated its email system from Groupwise to Exchange starting in 2011 and completed the migration in 2013. All Travis County employees, elected and appointed officials receive an individual County- issued email address upon the start of their employment or taking office. Each County- issued email address is assigned an electronic mailbox that is maintained on the Travis County Exchange server. Amongst my duties with ITS is having System Administrator access authorization to the Travis County Exchange servers."
3. "To conduct the search, I log into Exchange Control Panel via a web browser as an Exchange administrator. With Microsoft's Exchange 2010 multi-mailbox search tool, I

list the mailboxes the tool needs to look at with all conditions required for the search. The tool then searches the user mailboxes on the back-end and sends the results to a search result mailbox.”

4. “I conferred with ACA Nelson to develop specialized “key word” search terms used in Microsoft Exchange multi-mailbox search to set the parameters of the search believed to be likely to yield responsive information. In an effort to capture all potential responsive information I utilized specific key word search terms provided by ACA Nelson from the Public Information Act Request and the discovery requests that were calculated to yield broad inclusive results. Once the searches were completed they were placed in named search result folders and provided to ACA Nelson by providing him and his paralegal, Amy Pollock permission to access the folders in their respective Outlook clients. The searches I conducted encompassed all messages in each user’s mailbox that were on the County’s email servers for the search terms used for the date range searched at the time the searches were conducted. This would include all email in the user’s mailbox, no matter what folder it was stored in. It would include the ‘sent’, ‘inbox’ ‘draft’ and ‘deleted items’ folders, as well as custom named folders in the mail box the user created. With respect to the ‘deleted items’ folder it would also include emails that the user had deleted from other locations within the mailbox, so long as the user had not emptied the ‘deleted items’ folder on their mailbox. If the deleted items folder is not emptied, Travis County’s Exchange servers are setup to store these items indefinitely, or until space runs out. In addition, as a System Administrator I can place an electronic litigation hold on a user’s mailbox. The electronic litigation hold prevents the user from being able to delete emails from being stored on the server. While it appears to the user that the email has been deleted, the litigation hold maintains the email on the storage solution (SAN). At the time of the searches conducted on the Exchange mailboxes of Commissioner Daugherty and his staff, each of these mailboxes had, and continues to have a litigation hold in place.”
5. “On January 27, 2014, I received a request through Assistant Travis County Attorney Tony Nelson (‘ACA Nelson’) to conduct searches of the ‘Exchange’ electronic mailboxes maintained on the Travis County servers for Travis County Precinct 3 Commissioner Gerald Daugherty and the members of his staff, past and present (the ‘First Request’). Because Commissioner Daugherty is an independent elected official, under Travis County ITS procedure I had to first obtain Commissioner Daugherty’s consent to conduct the searches. After securing consent I began to conduct the searches. The First Request was completed on January 28, 2014.”
6. “Pursuant to the First Request, I conducted searches on the Exchange electronic mailboxes of Commissioner Gerald Daugherty, his present staff members Robert Moore, Madison Gessner and Martin Zamzow, and his former staff member Barbara Smith (collectively referred to as ‘staff’), utilizing the following query terms: (“SH 45” OR “SH 45 SW”) OR (“State Highway 45” OR “State Highway 45 Southwest”) OR (“Manchaca Expressway”). This search query was run by me utilizing the date range of January 23, 2013, through May 10, 2013. I placed the emails pulled in this search in a

folder labeled 'IR-9053-Daugherty_Search' for the ACA Nelson with the Travis County Attorney's Office to review."

7. "On April 4, 2014, I received a request to conduct another set of searches (the 'Second Request'). The Second Request was completed on April 7, 2014. On that date I conducted searches on the Exchange electronic mailboxes of Commissioner Daugherty (separately) and his present and former staff members (combined), utilizing the following query terms: (1) '("SH 45" OR "SH 45 SW") OR ("State Highway 45" OR "State Highway 45 Southwest") OR ("Manchaca Expressway")' with the date range of May 11, 2013, through April 7, 2014. Results for Commissioner Daugherty's email were placed in a search folder labeled 'IR-9053-DaughertySearch2-Commissioner', and results for his staff members were placed in a search folder labeled 'IR-9053-DaughertySearch2-Staff'; (2) '("SH45" OR "SH45SW") OR ("45 SW" OR "45SW")', with a date range of January 22, 2013, through May 10, 2013. Results for Commissioner Daugherty's email were placed in a search folder labeled 'IR-9053-DaughertySearch3-Commissioner' and results for his staff members were placed in a search folder labeled 'IR-9053-DaughertySearch3-Staff'; (3) '("SH45" OR "SH45SW") OR ("45 SW" OR "45SW")' with a date range of May 11, 2013, through April 7, 2014. Results for Commissioner Daugherty's email were placed in a search folder labeled 'IR-9053-DaughertySearch4-Commissioner' and results for his staff members were placed in a search folder labeled 'IR-9053-DaughertySearch4-Staff'; (4) '("Bill Walters" OR "Walters")' with a date range of January 22, 2013, through April 7, 2014. Results for Commissioner Daugherty's email were placed in a search folder labeled 'IR-9053-DaughertySearch5-Commissioner' and results for his staff members were placed in a search folder labeled 'IR-9053-DaughertySearch5-Staff'; and (5) '("Susan Narvaiz" OR "Narvaiz")' with a date range of May 10, 2013, through April 7, 2014. Results for Commissioner Daugherty's email were placed in a search folder labeled 'IR-9053-DaughertySearch6-Commissioner' and results for his staff members were placed in a search folder labeled 'IR-9053-DaughertySearch6-Staff'."
8. "On August 14, 2014, I was received another request from ACA Nelson to conduct a third set of searches (the 'Third Request'). The Third Request was completed on August 15, 2014. I conducted searches on the Exchange electronic mailboxes of Commissioner Daugherty (separately) and his present and former staff members (combined), utilizing the following query terms: (1) '("retention of public information")' with no limited dated range. Results for Commissioner Daugherty's email were placed in a search folder labeled 'Daugherty Search 7-Commissioner' and results for his staff members were placed in a search folder labeled 'Daugherty Search 7-Staff'; (2) '("retention" AND "public information")' with no limited date range. Results for Commissioner Daugherty's email were placed in a search folder labeled 'Daugherty Search 8-Commissioner' and results for his staff members were placed in a search folder labeled 'Daugherty Search 8-Staff'; and (3) '("SH 45" OR "SH 45 SW") OR ("State Highway 45" OR "State Highway 45 Southwest") OR ("Manchaca Expressway") OR ("SH45" OR "SH45SW") OR ("45 SW" OR "45SW")' with a date range of January 1, 2013, through August 15, 2014. Results for Commissioner Daugherty's email were placed in a search

folder labeled 'Daugherty Search 9-Commissioner' and results for his staff members were placed in a search folder labeled 'Daugherty Search 9-Staff'."

The afore-described searches and corresponding Results Folders were provided to Gerald Daugherty's counsel, ACA Nelson for review."

Further Affiant Sayeth Not.

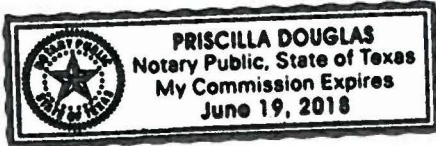
Frank J. Trevino

Frank Trevino
Systems Engineer III
Information Technology Service

THE STATE OF TEXAS
COUNTY OF TRAVIS

On this day personally appeared the person know to me to be Frank Trevino who after have been duly sworn stated upon his oath that he is over the age of 21 years and was competent to make an oath, that he had read the above and foregoing Affidavit of Frank Trevino, that he had personal firsthand knowledge of all facts and matters stated in the above and foregoing Affidavit, that all facts and matters stated therein were true and correct.

SWORN TO AND SUBSCRIBED before me on the 3rd day of April, 2015.



Priscilla Douglas

Notary Public, State of Texas

My commission expires: 6/19/2018