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NO. GN 301665

LON BURNHAM,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
THOMAS A. DAVIS, JR., DIRECTOR, TEXAS DEPARTMENT OF PUBLIC SAFETY; AND TEXAS DEPARTMENT OF PUBLIC SAFETY,	§	
	§	
Defendants.	§	250th JUDICIAL DISTRICT

MOTION FOR PROTECTION FROM NOTICED DEPOSITION

Defendants, Thomas A. Davis, Jr., Director, Texas Department of Public Safety and the Texas Department of Public Safety, pursuant to Texas Rules of Civil Procedure 192.6 and 199.4 move for protection from the noticed depositions of:

a) Lt. Will Crais, Texas Department of Public Safety;

b) Lt. Dino Henderson, Texas Ranger;

c) Lt. Ken Schear, Texas Department of Public Safety; and

d) Chief Randall K. Elliston, Texas Department of Public Safety.

In support of their motion, Defendants state:

1. On May 19, 2003, Plaintiff submitted an open records request pursuant to the Public Information Act requesting "all documents regarding the Legislators not attending the legislative session on May 12 to 15."

2. On May 22, 2003, Plaintiff Lon Burnham filed his Original Petition, Petition for Writ of Mandamus, Application for Temporary Restraining Order and Injunctive Relief (Plaintiff's

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Petition).

3. Plaintiff alleges in support of his application for a temporary restraining order that subsequent to his open records request he became "aware through a reliable source that document destruction continued..." (Petition p. 4).

4. Defendants are aware of no such document destruction occurring at any time after the receipt of the open records request on May 19, 2003, and Defendant provided no such evidence at the hearing on the request for a temporary restraining order, nevertheless, on May 22, 2003 the court granted a temporary restraining order and set a hearing on the temporary for June 5, 2003 at 9:00 a.m.. It is not possible to prepare for the preliminary injunction hearing or to prepare for the defense of depositions until Plaintiff identifies the source of the information that documents were allegedly destroyed after the receipt of the open records request on May 19, 2003.

5. Accordingly, Defendants promptly noticed depositions for as soon as practicable, for Thursday, May 29, 2003, at 1:00 pm. Not only is it necessary to take these depositions in order to prepare for the preliminary injunction hearing, it is critical to determine whether there is any basis for the allegation that document destruction occurred after May 19, 2003. As noted, Defendants have no reason to believe this occurred, but must be apprised immediately of any evidence to the contrary.

6. On May 27, 2003 Plaintiff filed his Motion for Protection from Noticed Deposition asserting that his attorney will not be available to represent him on May 29 and that because Plaintiff is a member of the House of Representatives he will be unavailable to be deposed any time prior to Monday, June 2, 2003.

7. Given the gravity of the allegation made by Representative Burnham, he should be prepared to give testimony disclosing the basis of his allegation that documents were destroyed after

May 19, 2993 and Defendants have accordingly set a hearing on Plaintiff's Motions for Protection from Noticed Depositions for May 28, 2003, at 10:00 am.

8. In the event the Court grants Plaintiff's Motions for Protection from Noticed Depositions, then Defendants seek protection from the depositions scheduled for Monday, June 2, 2003, to a date subsequent to the taking of the Plaintiff's deposition. Defendants further move that the depositions to be taken of Lt. Will Crais, Texas Department of Public Safety, Lt. Dino Henderson, Texas Ranger, Lt. Ken Schear, Texas Department of Public Safety, and Chief Randall K. Elliston, Texas Department of Public Safety, be expressly limited to only questions concerning the alleged document destruction occurring subsequent to May 19, 2003 as that is the only relevant issue in this matter.

9. Counsel for Plaintiff certifies that he has attempted to resolve the issues raised in this motion but was unsuccessful.

Respectfully submitted,

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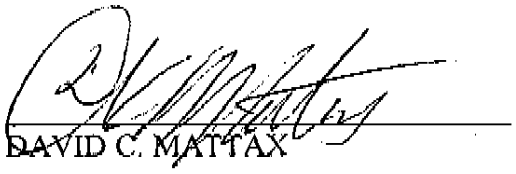
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing MOTION FOR PROTECTION FROM NOTICED DEPOSITION has been served via hand-delivery and by facsimile on this the 27th day of May, 2003, to the following:

Catherine Mauzy, Esq.
700 Lavaca, Suite 1150
Austin, TX 78701
(512) 482-0525 Telecopier



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