(3)

To: Jessica Schleifer
Director, Senate Committee on Open Government

From: Joseph R. Larsen
Board Member, Freedom of Information Foundation of Texas

Date: November 21, 2012

Re: Written Testimony on Records Retention Issues; Interim Charge

Dear Ms. Schleifer:

Thank you for this opportunity to provide this written testimony to the Honorable Open Government Committee on this topic of fundamental importance to understanding our government now, in the future, and when our children write the history of our day. There are innumerable issues that relate to records retention. My comments will fall into three categories: (1) Retention Guidelines Generally; (2) Retention of emails – form in which retained; and (3) retention of electronic information – definition of public information.

1. **Retention Guidelines**

Ironically, as the cost of retaining records is falling to ever new lows as a result of the digital revolution, there is a push to shorten the time frame for which governmental bodies are obligated to keep records of their official activity. Even under the current retention schedules, in many cases, the time period for retaining much public information is shorter than the term of the administration that created them. These records document how government functions, and even if they are confidential or otherwise claimed not to be available to the general public, it is in the public interest that they at least be made available to subsequent administrations of governmental bodies in question and to law enforcement, if necessary. This is true from the perspective of improving governmental processes and procedures, resolving disputes regarding policy positions and deliberations, to provide accountability, to promoting the ideal of limited government by insuring a historical record available to the people and their representatives. Aside from that, the importance of record management on the ability of an organization to function effectively in its day to day operations and over the long term is indisputable.

Testimony and discussions regarding the cost of record keeping should be welcomed by the Committee, and any specific request should be examined both in regard to the cost of maintaining records, the efficiency of the records management, and the impact that the method of record retention is expected to have on the cost of filling future Public Information Act requests.

2. **Retention of Emails**

Despite some on point regulations in the Texas Administrative Code, it is fair to say that email retention practices differ widely across state agencies and local governmental bodies. Of course, every retention requirement that would benefit requestors in terms of ease of search and cost of reproduction will also benefit the governmental body itself in terms of internal efficiency. To the extent governmental bodies' complaints regarding the cost of dealing with Public Information Act requests have merit (they recover their costs in line with the AG's cost schedule and may request exemption from cost guidelines where justified), it is difficult to be sympathetic when a major driver of such costs is administrative inefficiency. It seems clear that the TAC requirement

of 13 TAC § 6.93(b) that electronic information be maintained in electronic form is an acknowledgement of this reality.

This matter is probably best encapsulated by a case on point – Mr. John Washburn's complaint regarding the governor's office's practice of deleting all emails sent to or received by that office within 7 days. To provide the committee with additional detail in this regard, I have attached a copy of Washburn's complaint to the attorney general and the AG's disposition rejecting the complaint. You will note that the basis for the attorney general's rejection of the complaint is that the governor's office keeps a paper copy. This is doubtless the least effective way to store this information, to say nothing of information lost, and also adds a layer of cost to create paper copies where none are required and a layer of cost and inefficiency in terms of searching for the information to begin with. In addition, I also attach a copy of an order for summary judgment entered in a case brought by KTRK requiring Sheriff Thomas to retain emails in electronic form beyond the 30 day limit set by his policy, referenced in the complaint.

The answer to this problem is a statutory requirement written along the lines of 13 TAC § 6.93(b), and specifically excluding the option of deleting if there is a copy in non-electronic form, and applicable to all governmental bodies.

3. When emails in possession of a governmental body are claimed not to be public information.

This occurs in several scenarios, but I will briefly address here the claim (approved by the attorney general in letter rulings) that emails placed on a back up tape are not "maintained" by the governmental entity. To illustrate this issue, we attach an excerpt of correspondence from counsel for Parkland Hospital that speaks directly to this argument. This is really the same issue as item 2 above in that, under this argument, placing emails on a backup tape is the functional equivalent of deleting them. The requirement that information in electronic form must be maintained in electronic form is subverted at a basic level if "maintaining" the information on a back-up tape means it is not being "maintained" as that word is used in the Public Information Act.

4. Retention of "Private" emails discussing public business.

One of the great issues of our day is the status of emails that reside in private accounts of governmental officers and employees that are connected with the transaction of the official business of the governmental body. Such communications never even make it into the official record-keeping of the governmental bodies. While the attorney general has held these must be released, there are several court challenges pending on the issue, and the practical issues in enforcing the AG rulings are keen. The prime legal challenge in these cases is the claim that the governmental body is not the custodian of records for these emails, and does not have a right of access to them – despite the fact they bear directly on the transaction of official business. This is, of course, directly related to the question of by whom and for how long and in what form should these emails be retained.

The Committee should consider adopting legislation along the lines of Austin's recently enacted ordnance requiring employees to forward such emails to the governmental body's server. I have attached copies of these for the Committee's ready reference.

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 2-1 OF THE CITY CODE RELATED TO THE USE OF ELECTRONIC MAIL BY CITY BOARDS AND COMMISSIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Ordinance No. 20120802-014 is repealed.

PART 2. Chapter 2-1 (*City Boards*) is amended to add a new Section 2-1-49 to read:

§2-1-49 COMMUNICATIONS USING ELECTRONIC DEVICES.

(A) In this section, "electronic communications" means communications using an electronic device to transmit text. This section does not apply to voice communications. This section does not, by reverse implication, allow voice communications that are prohibited by Texas Government Code, Chapter 551 (*Open Meetings Act*) or Subsection (D) of Section 2-1-3 (*Boards Established*).

(B) The city clerk shall establish and maintain an electronic mail (e-mail) system for the use of City board members in conducting board business. The city manager shall provide the necessary technical support.

(C) Except as provided in this subsection, a City board member shall use the City e-mail account provided by the city clerk under Subsection (B) for all electronic communications related to the member's service as a board member.

(1) Before the city clerk may furnish a City e-mail account to a board member, the member must receive training on the use of the account, and accept the terms of a user agreement to be prescribed by ordinance.

(2) If a board member receives a communication related to the member's service as a board member on a non-City account, the member shall promptly forward the communication to the City account furnished to the member.

(3) A board member who does not comply with the training requirement prescribed in Subsection (B)(8) of Section 2-1-23(*Training*), or does not accept the terms of the user agreement, may not have access to a City e-mail account. A board member who does not have access to a City e-mail account may not use electronic devices for communications related to board business.

(a) Except as provided by (b), a board member who uses electronic devices for communications related to board business in violation of this subsection without prompt remedy automatically vacates the member's position, subject to the hold over provision in Section 2-1-27 (*Vacancy and Hold Over Capacity*).

(b) This subsection does not prohibit a City employee who is assigned to support a board as a job duty from contacting a board member by telephone or e-mail or prohibit the board member from responding to a communication initiated by the liaison.

PART 3. Section 2-1-23 (*Training*) of the City Code is amended to read as follows:

§ 2-1-23 TRAINING.

(A) A board member must comply with the training requirements of this section to maintain eligibility to serve on the board. Except as provided by Subsection (C), a [~~A~~]board member who does not comply with the training requirements automatically vacates the board member's [~~his~~] position, subject to the hold over provision in Section 2-1-27 (*Vacancy and Hold Over Capacity*).

(B) Each board member must complete a board course developed by City staff not later than the 90th day after the date of the member's appointment or reappointment. The training shall include:

(1) a review of a board member's personal and ethical responsibilities;

(2) the role of council and staff and the council-manager form of government;

(3) the role of advisory boards in making recommendations and advising council;

(4) board procedures, including attendance and quorum;

(5) the City's business planning process;

(6) Government Code Chapter 551 (Open Meetings Act), Robert's Rules of Order, and Americans with Disabilities Act requirements; [~~and~~]

(7) conflict resolution; and

(8) the use of a City e-mail account for board-related business.

(C) A board member who does not comply with the training requirement prescribed by Subsection(B)(8) does not vacate the board member's position, but is subject to the prohibition of Subsection (C)(3) of Section 2-1-49 (*Communications Using Electronic Devices*).

PART 4. Each board member serving on a City board on the effective date of this ordinance shall comply with the training requirement of Section 2-1-49(B)(8) within 90 days of the effective date, subject to the prohibition in Section 2-1-49(C)(3). The City Clerk shall notify all sitting board members of the availability of the training, the deadline for taking the training, and the consequence of failing to take the training and sign the user agreement prescribed by Section 2-1-49.

PART 5. The user agreement under Section 2-1-49(C)(1) of the City Code is set out in Exhibit A to this ordinance and is incorporated in this ordinance for all purposes as if set out in full.

PART 6. This ordinance takes effect on _____, 2012.

PASSED AND APPROVED

§
§
_____, 2012 §

Lee Leffingwell
Mayor

APPROVED: _____
Karen M. Kennard
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk

OGDEN, GIBSON, BROOCKS & LONGORIA, L.L.P.
ATTORNEYS
1900 PENNZOIL SOUTH TOWER
711 LOUISIANA
HOUSTON, TEXAS 77002

JOSEPH R. LARSEN
DIRECT DIAL: (713) 844-3040

TEL. (713) 844-3000
FAX (713) 844-3030

May 14, 2008

Mr. Harry White
Office of Texas Attorney General Greg Abbott
Criminal Prosecutions Division
209 West 14th Street, 6th Floor
Austin, Texas 78701

Via Federal Express and Email

Re: Public Information Act Requests to Governor Perry of John Washburn; Formal Complaint to Texas Attorney General

Dear Mr. White:

We are writing this correspondence on behalf of Mr. John Washburn with regard to his ongoing dispute with the Governor's office. This correspondence is Mr. Washburn's formal complaint to the Texas Attorney General pursuant to Tex. Gov't Code § 552.3215 regarding Governor Perry's policy of automatically deleting emails seven days after their creation. On March 17, 2008, we filed a complaint with the Travis County District Attorney on the grounds that the Governor's policy of automatically deleting emails seven days after their creation results in the destruction of public information. A copy of that complaint is attached as *Exhibit* A. On April 15, 2008, the Travis County District Attorney declined to take action to require Mr. Perry to comply with the Act and retention schedules. *See Exhibit B.*

Background and Procedural History

Mr. Washburn made a series of requests to the Governor's Office for electronic copies of emails sent to and from the Governor's office for various periods from November 2, 2007 to December 3, 2007, inclusive. The purpose of this series of requests was to call attention to, and to seek to end, the Governor's policy of deleting all emails seven days after their creation.

Indeed, in the first correspondence of the Governor's Office to Mr. Washburn on this matter, a "request for clarification" dated November 7, 2007 (*Exhibit C*), the Office of the Governor confirms unambiguously that their email system "automatically deletes e-mails after a seven-day period."

Governor Perry provided copies of his records retention policy, Section C of which states, in part, that:

> It is each employee's responsibility to determine if an e-mail communication should be retained, and, if so, to (1) print the e-mail communication as a hard copy, or save it to hard drive or disk, prior to its automatic deletion; and (2) ensure that the printed email communication is appropriately filed and retained according to the office's approved retention schedule.

Exhibit D.

This policy insures that valuable public information is lost. Just as an example, the Texas Attorney General was investigating the Harris County District Attorney for possible campaign violations, the basis of which is emails sent on the county server (that investigation ceased after Mr. Rosenthal resigned). An automatic deletion policy would surely have erased any such evidence.

Further, this policy is inconsistent with the Governor's obligations under the Texas Administrative Code which defines "electronic mail record" as part of the larger category of "electronic state record." 13 T.A.C. sec. 6.91(2). 13 T.A.C. sec. 6.93(b) (emphasis added) requires that:

> Any electronic records system developed or acquired by a state agency, after the effective date of these sections, must meet the following requirements:
>
> (1) have the capability for preserving any electronic state record resident *in the system for its full retention period*; or, there must not be any system impediments that prevent migrating the record to *another electronic records system*, in as complete a form as possible;
>
> (2) sufficiently identify records created on the system to enable agency staff to retrieve, protect, and carry out the disposition of records *in the system*;
>
> . . .

This is also reflected in 13 T.A.C. sec. 6.94(a) which requires a state agency to establish policies and procedures to:

> (1) ensure that an electronic state record and any software, hardware, and/or documentation, including maintenance documentation, required to retrieve and read the electronic state record are retained as long as the approved retention period for the record; or
>
> (2) provide for recopying, reformatting, and other necessary maintenance to ensure the availability and usability of an electronic state record until the expiration of its retention period.

These code requirements, which govern all "state agencies" to include the Governor's Office, clearly require not only that an electronic record be kept, but that it be kept as an *electronic record.*

Following receipt of notice from the Travis County District Attorney that it would not take any action in response to Mr. Washburn's complaint, I contacted Assistant District Attorney Greg Cantrell to inquire as to the basis for this decision.

It became clear from Mr. Cantrell's recounting of his communications that he had simply been advised that the Governor's office *did not have the capacity* to store emails as required under the TAC requirement. However, given the storage capacity of email servers, even those several years old, this is a hard claim to credit. Even if it were true, that does not excuse noncompliance with the TAC. Mr. Cantrell also made reference to a parallel electronic archive system that he believes would comply with the TAC provision. However, the nature of this parallel system is unclear and, if it exists, it is apparently not searchable as the Governor's office gave cost estimates to Mr. Washburn based upon the need for each workstation to manually search for responsive emails despite vociferous objection by Mr. Washburn that the search could be done more efficiently at the server. It frankly looks as though the Travis County District Attorney made only a cursory investigation.

Mr. Cantrell also admitted that he took no steps to insure that, even if keeping a paper copy of an email were a proper substitute for archiving the electronic original, Mr. Perry's office actually keeps and files such copies. Given the scope of the email deletion (total), the proposition that the Governor's Office prints and files all emails that fall within the retention schedules is also difficult to credit.

As your office may know, on January 9, 2008, in the wake of release of emails Mr. Charles Rosenthal had sent and received on his government email address (which

ultimately led to his resignation), Harris County Sheriff Tommy Thomas issued a directive that required deletion of all departmental email older than 14 days regardless of content or subject matter and without reference to the mandatory document retention schedules set forth in the TAC. This directive only differs from the Governor's policy in the timing.

In response to this action by Sheriff Thomas, Channel 13 reporter Wayne Dolecfino sought and obtained a permanent injunction against Sheriff Thomas prohibiting him from implementing the policy. A copy of the order for summary judgment entered in that case by the 281st District Court of Harris County is attached hereto as *Exhibit E.*

The importance of preservation of this information is underscored by the fact that the Attorney General's Office is itself assisting the current Harris County District Attorney, Ken Magidson, in an ongoing investigation of Mr. Rosenthal. *See Exhibit F*, "DA probing ex-DA on QT" by Rick Casey published May 13, 2008 in the Houston Chronicle. As a law enforcement agency, the Attorney General is well aware of the need to preserve the records of the communications of our public officials to insure accountability of our democratic institutions.

The only conclusion one may reach from the current policy of Governor Perry of automatically deleting emails seven days after their creation is that his office is destroying public information in violation of established retention requirements. This clearly establishes a violation of sec. 552.351 which states that a "person commits an offense if the person willfully destroys, mutilates, removes without permission as provided by this chapter, or alters public information." We therefore file this formal complaint request with the Texas Attorney General pursuant to Tex. Gov't. Code §552.3251 requesting that the Attorney General file suit for injunction and/or declaratory judgment and/or take other appropriate action to require the Governor's office to cease and desist from this continued violation of the law.

Very truly yours,

Joseph R. Larsen

JRL:lkn
S:\FOIFT\Washburn\Atty Gen.White.ltr.5.14.08.doc

cc: Mr. John Washburn ***Via Email***

Mr. Greg Cantrell — ***Via Regular Mail***
Assistant District Attorney
Travis County District Attorney's Office
P. O. Box 1748
Austin, Texas 78767

Ms. Chelsea Thornton — ***Via Regular Mail***
Assistant General Counsel
Office of the Governor
P. O. Box 12428
Austin, TX 78711

Mr. Thornton Wood — ***Via Email***
Assistant Attorney General
Open Records Division

FOIFT Board Members — ***Via Email***

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2008

Mr. Joseph Larson
Sedgwick, Detert, Moran & Arnold, L.L.P.
1111 Bagby St. Suite 2300
Houston, Texas 77002

RE: Request for Suit for Declaratory Judgment - Texas Government Code Section 552.3215

Dear Mr. Larson:

I have reviewed your request for a suit for declaratory judgment against the Governor's Office, for violations of the Public Information Act. For the reasons explained below, no action by this office is warranted at this time.

From November 2, 2007 to December 3, 2007, your client, John Washburn, made a series of Public Information Act (PIA) requests to the Governor's Office asking for emails that had been sent and received by that office. Mr. Washburn's complaint is that the Governor's Office automatically deletes email from its email system after seven calendar days. Governor's Office employees are required to print or otherwise save non-transitory records in another manner in accordance with the Governor's Office State Library and Archives Commission-approved records retention schedule. That is, they do not rely upon their email system to preserve records that must be retained under state law.

On March 17, 2008, you filed a request for suit for declaratory judgment with the Office of the Travis County District Attorney under section 552.3215(e) of the Government Code. On April 15, 2008, the Office of the Travis County District Attorney chose not to file the suit. On May 14, 2008, in accordance with section 552.3215(i) of the Government Code, you asked the Office of the Attorney General to file suit. On May 29, 2008, you filed a supplement to your complaint. As we agreed, this extended the deadline for the Office of the Attorney General to decide whether or not to file suit to June 30, 2008.

The crux of your client's complaint is that leaving emails on the email system for only seven day provides an inadequate period of time to comply with applicable records laws. You allege this time period is inadequate because it is likely electronic governmental records will be lost due to employees' failure to save the emails in another format (either electronic or paper) prior to auto-deletion. Another concern you raise is that this policy if used by other agencies makes it more difficult to prove potential criminal wrongdoing because evidence contained in the emails will be destroyed. You further assert that the seven-day auto-deletion policy violates section 552.351 of the Government Code - Destruction, Removal, or Alteration of Public Information. You state that this policy "of automatically deleting emails seven-days after their creation is destroying public information in violation of established retention requirements."

Thus, the question presented is whether the Governor's Office policy of automatically deleting emails after seven days violates the PIA.

There is no question that email constitutes "public information" under the PIA.[1] And email is an "electronic mail record" as defined by the Texas State Library and Archives Commission rules in the Texas Administrative Code (TAC).[2] Hence, certain email messages must be preserved under both public information and state archives laws. Thus, the issue is whether the Governor's Office seven-day auto-deletion rule allows sufficient time to comply with the requirements of the PIA and the TAC.

Our laws recognize that it is neither administratively feasible, nor cost effective, to keep every piece of recorded information generated by government.[3] The statutory framework enacted by the Legislature contemplates the need for records retention schedules, which are approved by the State Library and Archives Commission. Absent a mechanism to discard non-critical information, the State of Texas would be overcome with its own records which must be maintained

---

[1]TEX. GOV'T CODE §552.002.

[2]Title 13, Part1, Chapter 6, Subchapter C, Rule §6.91(2).

[3]TEX. GOV'T CODE Chapter 441, Subchapter L.

at taxpayers' expense. However, to preserve our history and maintain transparency in government, the maintenance of vital governmental records is also a goal. Hence, the Legislature created a system to prevent the wholesale destruction of state records that could be of value to future generations of Texas, while at the same time recognizing the costs of records retention by enabling state agencies to destroy some records when their utility has ended. To balance the need to eliminate information that no longer serves an archival purpose and the imperative to save state records of historical significance, the Legislature created records retention schedules.[4]

Under Texas law, the State Library and Archives Commission (TSLAC) is charged with preserving state records for historical purposes. Thus, that agency promulgates rules that advance its purpose and, consistent with state law and its own rules, approves all state agencies' records retention schedules. Each state agency has such a schedule, including the Governor's Office.

A review of the Governor's Office records retention schedule shows that "email" is not a specifically delineated records retention series. Instead, email falls within whatever records retention series the content of the communication constitutes. Thus, the content of the communication dictates its retention period. There are 277 different records series for the Governor's Office. These range from pardon files to communications with the Lt. Governor to photocopier use logs. Each of these series has its own TSLAC-approved retention period.

Under the Governor's Office TSLAC-approved retention schedule, email is not a separate category of information. Rather, email, letters, and other communications are retained based upon the subject matter discussed therein. Thus, for example, whether a communication with the Lieutenant Governor is in an email or in a letter is irrelevant. The controlling issue is the subject matter. Therefore, all affected information must be maintained pursuant to the TSLAC-approved retention schedule. Thus, under the Governor's Office TSLAC-approved policy, any email communications that must be preserved should either be printed or saved in electronic form outside of the email system. The Governor's Office established that this is administratively practical for a number of reasons. For the sake of administrative efficiency, having all records of similar content in one place is preferable. Further, to ensure the production of responsive information in response

---

[4]TEX. GOV'T CODE §441.185.

to a content-based PIA request, the Governor's Office maintains its records in a content-based system wherein each topic is stored with the rest of the related material. The Governor's Office does not use the email system as a filing system, but rather as a means of transmitting communications.

Your client's complaint questioned whether the seven-day auto-delete computer function jeopardized the legally required retention of certain documents. As a result, the Office of the Travis County District Attorney asked how the Governor's Office handles the seven-day automatic delete policy when an employee is away from the office for a prolonged period of time. The Governor's Office explained that either the automatic delete function can be turned off, or a manager can review the email account of the absent employee for any electronic communication that needs to be saved.

After reviewing the Governor's Office records management operation, we find no evidence indicating that the Governor's Office failed to comply with the requirements set out by the TAC and PIA. Further, consistent with state legal and administrative requirements, we find no evidence showing that the Governor's Office seven-day auto-delete policy has failed to preserve public information in violation of state law. Because we uncovered no evidence indicating a failure to comply with state law, no further action is warranted by this office on this matter. By this letter, we inform you that this complaint has been thoroughly reviewed and, for the reasons stated herein, this matter is formally closed.

Regards,

Harry E. White
Assistant Attorney General

CC: Ms. Chelsea Thornton
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, TX 78711

Mr. Gregg Cox
Assistant District Attorney
Travis County District Attorney's Office
P.O. Box 1748
Austin, TX 78767

Mr. David Mattax - *via hand delivery*
Assistant Attorney General
Financial Litigation Division

NO. 2008-03462

WAYNE DOLCEFINO	§	IN THE DISTRICT COURT OF
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
HARRIS COUNTY SHERIFF'S DEPARTMENT AND SHERIFF TOMMY THOMAS	§	281st JUDICIAL DISTRICT COURT

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The Court has considered Plaintiff Wayne Dolcefino's Motion for Summary Judgment (the "Motion"), the Defendants' response, and the arguments of counsel. The Motion is GRANTED.

The Plaintiff's request for declaratory relief is GRANTED. Declaratory judgment is hereby rendered pursuant to the following terms:

(1) Defendants' January 9, 2008 email retention policy violates the Texas Local Government Code and/or Texas Public Information Act by requiring the deletion of all departmental email older than 14 days regardless of content or subject matter and without reference to mandatory document retention schedules set forth in the Texas Administrative Code;

(2) All emails deleted pursuant to the January 9, 2008 email retention policy constitute public information under the Texas Public Information Act regardless of storage medium, including backup tape; and

(3) Defendants' failure to produce responsive emails or timely request an Attorney General Opinion results in the presumption that all such emails are subject to public disclosure.

FILED
Theresa Chang
District Clerk
APR 7 2008
Time:
Harris County, Texas
By
Deputy

EXHIBIT E

Further, Plaintiff's request for entry of a permanent injunction is GRANTED, as follows: Defendants, and all agents acting in concert therewith, are hereby permanently enjoined from implementing the January 9, 2008 email retention policy.

It is further ORDERED, ADJUDGED, AND DECREED that Plaintiff's request for issuance of a writ of mandamus is GRANTED, as follows: Defendants are hereby ordered to make available for inspection by Plaintiff, within fourteen (14) business days of the date of this Order, all emails responsive to pending requests by Plaintiff, including the January 17, 2008, January 19, 2008, and January 25, 2008 requests, which encompass all emails deleted pursuant to the January 9, 2008 email retention policy. Based on Defendants' failure to either release the requested information or timely seek an Attorney General Opinion as to whether the deleted emails constitute public information, Defendants shall not assert any exceptions to disclosure other than the exceptions contained in Tex. Gov't Code § 552.101 ("Confidential Information"), § 552.108 ("Certain Law Enforcement and Prosecutorial Information"), § 552.117 ("Certain Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information"), § 552.119 ("Photographs of Peace Officer or Certain Security Guards'), and § 552.127 ("Personal Information Relating to Participants in Neighborhood Crime Watch Organization").[1] Defendants shall bear all costs incurred in making responsive emails available for inspection. Plaintiff shall bear all statutory costs incurred by Defendants in producing hard copies, if any, requested after the inspection.

It is further ORDERED, ADJUDGED, and DECREED that for purposes of an award of attorneys' fees and costs pursuant to the Texas Public Information Act, § 552.323, and/or the

[1] The Defendants have the burden of demonstrating the applicability of any such exceptions. Defendant must provide a log identifying with sufficient specificity any emails withheld in order for the Plaintiff to assess the applicability of the exception.

Uniform Declaratory Judgment Act, § 37.009, Plaintiff is a substantially prevailing party and, thus, the Court GRANTS Plaintiff's request for an award of reasonable and necessary attorneys' fees and costs incurred in filing and prosecuting this action. Plaintiff shall file an affidavit proving up such fees and costs within fourteen (14) days of the date of this Order.

This is a Final Judgment.

All other costs shall be taxed against the Defendants, for which let execution issue.

SIGNED this _____ day of 4/7, 2008.

JUDGE PRESIDING

I, Theresa Chang, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date
Witness my official hand and seal of office
this April 22, 2008

Certified Document Number: 37081886 Total Pages: 3

THERESA CHANG, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

5. **Please therefore confirm that Parkland has the standard capacity of searching emails from its server. If Parkland has a policy of deleting emails from its server and meeting its retention obligations through printing emails and filing them in paper form, please so advise.**

At the time of your clients' request, Parkland's email system automatically archived all emails after 30 days. As a result, messages older than 30 days were only located on backup tapes, not on the email servers. Those archival tapes were not searched in response to the PIA request. *See* Tex. Atty. Gen. Op. OR2010-05475 ("[A]ny of the requested information that existed only in back-up tapes at the time of the request was no longer being 'maintained' by the city at the time of the request, and is not public information subject to disclosure under the Act"). Parkland's personnel did search the active folders of the email accounts believed to be relevant to your clients' requests, but no responsive emails were found.

For record-retention purposes, Parkland treats emails under the same standards applicable to records maintained on paper, microfilm, and other types of media. Parkland's record-keeping policies do not require the printing and retention of all emails in paper copy. However, many paper copies of emails are contained within the physical files collected in response to your clients' request. Those paper copies of responsive emails have either been made available to Mr. Dunklin or, if they are not subject to disclosure, are being recorded on Parkland's privilege logs.