

July 30, 2013

*Via Email*

Molly Cost  
Assistant General Counsel  
Texas Department of Public Safety ("DPS")  
5805 N. Lamar Blvd. Box 4087  
Austin, Texas 78773-0001  
OGC.Webmaster@dps.texas.gov

**Re: Your letter to me dated July 29, 2013, with subject line, "Public Information Request for records regarding the events at the Capitol on 7/12-13/13 (PIR # 13-2744)" (the "10-Day Letter").**

Dear Ms. Cost:

I am in receipt of the 10-Day Letter you sent in response to my recent Public Information Request for information about the DPS press release concerning jars of human waste allegedly confiscated by DPS at the Texas Capitol in mid-July (apparently now known as "Poopgate"). A copy of the 10-Day Letter (with attachments) is enclosed for your convenience. As explained below, the 10-Day Letter fails to meet DPS's obligations under the Public Information Act, Tex. Gov't. Code §§ 552.001 *et seq* (the "Act"). As a result, the information is now deemed to be public information that must be produced. Act § 302. Accordingly, I am writing to demand that you immediately produce the information I requested.

Let me begin by saying that I do not envy your job. While I typically represent small and large corporations and individuals in commercial and employment related matters, I also occasionally represent cities, municipal districts and other governmental agencies. Thus, I am familiar with the challenges you face trying to balance the need to protect your governmental agency's sensitive information and the need to provide the citizens of Texas with "complete information about the affairs of government and the official acts of public officials and employees" as mandated by our Legislature. Fortunately for both of us, the Legislature also recognizes these challenges, and provides us with guidance when we may doubt whether to produce requested information: by its express terms, the Act "shall be liberally construed in favor of granting a request for information."

Despite this guidance, you failed to produce any information to me in response to my request. In your letter, you state merely that "some or all of the records may be excepted from required public disclosure at this time." You then state that you have requested a ruling from the Attorney General's (the "AG's") office, and you enclosed a letter to the AG requesting such a ruling. In your letter to the AG (the "10-Day AG Letter"), you state (among other things) that DPS "believe[s] that some or all of the requested information is excepted from required public disclosure pursuant to sections 552.101 through 552.153 of the Government Code."

As you know, the Act requires public agencies like DPS to produce public information upon request. According to the Act, DPS was required to produce the requested information within 10 days of my request, or to certify in writing that it cannot and to provide me with a specific date and time when the information would be available. Act § 221. Your 10-Day Letter suggests that only “some” of the information I requested “may” be excepted from disclosure. If so, then some of the information requested must not be. DPS had a duty to produce that information to me, or to provide me with a date and time when it would, and it failed to meet that duty.

Instead, DPS has attempted to punt my request to the AG’s office. DPS’s attempt to hide behind the AG to avoid producing the requested information, however, is fatally flawed. The Act allows DPS to seek an opinion from the AG, allowing DPS to withhold information, only if DPS follows very specific procedures outlined in the Act. According to the Act, if DPS wanted to punt to the AG’s office, it had to send me a letter stating that DPS wishes to withhold “**the** requested information,” *not* a letter stating that “some or all” of the requested information “may” be withheld. Additionally, to punt to the AG’s office, DPS needed to send me a copy of a letter from DPS to the AG. That letter **must** “state the exceptions that apply.” In your 10-Day AG Letter, **you list every single possible statutory exception from production**. But you and I both know that 52+ exceptions do not apply to my request. Tell me, for example, how my request is protected by the provision that allows you to withhold the identity of donors to public education institutions, or by the one that makes library records unavailable to the public, or by the one that pertains to public utility competitive matters, or by the one that protects the Texas no-call list, or by the one protecting appraisal district records. I could go on, but I won’t.

The Act is very clear that, if DPS fails to strictly follow the Act’s procedures for requesting an AG opinion, the information I requested is presumed to be public and should be disclosed unless DPS can state a compelling reason why it should not. Act § 302. In the AG’s own words, however, “[i]n the great majority of cases, the governmental body will not be able to overcome that presumption and must promptly release the requested information.” See AG’s Public Information 2012 Handbook at p. 43. I am interested to hear whether DPS is going to take the position that the information I have requested about Poopgate is of such paramount importance to DPS that there is a compelling reason to overcome the Texas legislature’s very clear declaration that “[t]he people, in delegating authority [to the government], do not give their public servants the right to decide what is good for the people to know and what is not good for them to know,” and that “government is the servant and not the master of the people.” Act § 001.

Thank you for your prompt attention to this letter. I look forward to receiving the requested information right away.

Sincerely,



Brian Trachtenberg

CC: The Honorable Greg Abbott

# TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

512/424-2000

[www.dps.texas.gov](http://www.dps.texas.gov)



STEVEN C. McCRAW  
DIRECTOR  
DAVID G. BAKER  
CHERYL MacBRIDE  
DEPUTY DIRECTORS



COMMISSION  
A. CYNTHIA LEON, CHAIR  
CARIN MARCY BARTH  
ADA BROWN  
ALLAN B. POLUNSKY  
RANDY WATSON

July 29, 2013

## **Via Email**

Brian Trachtenberg  
Pogach & Trachtenberg PLLC  
brian@law-pt.com

RE: Public Information Request for records regarding the events at the Capitol on 7/12-13/13  
(PIR # 13-2744)

Mr. Trachtenberg:

The Department received your above-referenced request on July 15, 2013. The Department has located records responsive to your request; however, we believe some or all of the records may be excepted from required public disclosure at this time. We are seeking a ruling from the attorney general's office with respect to disclosure of these records, and a copy of our request letter is enclosed. You will be notified directly by the attorney general's office when a ruling is issued.

If you have any questions regarding this request, please submit them in writing via facsimile to (512) 424-5716, via email to [OGC.Webmaster@dps.texas.gov](mailto:OGC.Webmaster@dps.texas.gov), via mail to the address in the letterhead, or in person at our offices at 5805 N. Lamar Blvd. in Austin. Thank you.

Cordially,

Molly Cost  
Assistant General Counsel

cc: The Honorable Greg Abbott  
Attorney General of Texas  
Open Records Division  
209 West 14th Street, 6th Floor  
Austin, Texas 78701

# TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

512/424-2000

[www.dps.texas.gov](http://www.dps.texas.gov)



STEVEN C. McCRAW  
DIRECTOR  
DAVID G. BAKER  
CHERYL MacBRIDE  
DEPUTY DIRECTORS



COMMISSION  
A. CYNTHIA LEON, CHAIR  
CARIN MARCY BARTH  
ADA BROWN  
ALLAN B. POLUNSKY  
RANDY WATSON

July 29, 2013

## Via Hand Delivery

The Honorable Greg Abbott  
Attorney General of Texas  
Open Records Division  
209 West 14th Street, 6th Floor  
Austin, Texas 78701

RE: Public Information Requests for records regarding the events at the Capitol on 7/12-13/13  
(PIR #s 13-2742, 13-2744, 13-2745, 13-2746, 13-2748, and 13-2749)

**DATE REQUESTS FOR INFORMATION RECEIVED:**

**7/15/2013**

**DATE REQUEST FOR RULING SUBMITTED TO ATTORNEY GENERAL:**

**7/29/2013**

Dear Attorney General Abbott:

The Department of Public Safety received the above-referenced requests for information from six (6) requestors on July 15, 2013. We believe some or all of the requested information is exempted from required public disclosure pursuant to sections 552.101 through 552.153 of the Government Code. Accordingly, we are requesting a ruling regarding the release of these records.

Please find enclosed the six (6) requests and the notices of our request for a ruling sent to the requestors. The responsive records or a representative sample of the records we wish to exempt from required disclosure will be submitted to your office no later than August 5, 2013. Please feel free to contact me at (512) 424-2890 if you have any questions.

Sincerely,

Molly Cost  
Assistant General Counsel

Enclosure(s)

cc: Marty Schladen  
El Paso Times  
1071 Clayton Lane, Apt. 207  
Austin, TX 78723

Brian Trachtenberg  
Pogach & Trachtenberg PLLC  
4200 Montrose Blvd. Suite 590  
Houston, TX 77006

Forrest Wilder  
Texas Observer  
307 W 7th St  
Austin, TX 78701

Eva R. Moravec  
San Antonio Express-News  
PO BOX 2171  
San Antonio, TX 78297-2171

Brandi Grissom  
The Texas Tribune  
823 Congress Avenue  
Suite 210  
Austin, TX 78701

Shefali Luthra  
The Texas Tribune  
Austin, TX  
Via Email

**From:** brian@law-pt.com  
**Sent:** Monday, July 15, 2013 12:32 PM  
**To:** OGC Webmaster  
**Subject:** Other

Salutation: MR  
First Name: Brian  
Last Name: Trachtenberg  
Company: Pogach & Trachtenberg PLLC  
E-Mail: [brian@law-pt.com](mailto:brian@law-pt.com)  
Mailing Address line1: 4200 Montrose Blvd. Suite 590 Mailing Address line2:  
City: Houston  
State: TX  
Zip: 77006  
Phone: 7135245400  
Fax: 7135245401  
How would you prefer to be contacted? Email

Description of Request Information: All public information reflecting, concerning or related to the statements of Texas DPS in its press release issued on July 12, 2013 (bearing the reference ### "(HQ 2013-87)" ), including, but not limited to:

1. All public information reflecting, concerning or related to the statement in that press release that DPS "received information that individuals planned to use a variety of items or props to disrupt legislative proceedings at the Texas Capitol," including but not limited to any public information that would reflect the source of the described information, how and when it was communicated to DPS, to whom at DPS it was communicated, and any and all internal discussions or treatments of the information; and
2. All public information reflecting, concerning or related to the statement in that press release that DPS "recommended to the Texas Senate that all bags be inspected prior to allowing individuals to enter the Senate gallery, which the Texas Senate authorized," including but not limited to all public information reflecting how the described information was reported to the Texas Senate, by and to whom it was reported, as well as all information reflecting, concerning or related to the statement that the Texas Senate "authorized" the requested conduct; and
3. All public information reflecting, concerning or related to the statement in that press release that "During these inspections, DPS officers have thus far discovered one jar suspected to contain urine, 18 jars suspected to contain feces, and three bottles suspected to contain paint," including but not limited to all public information reflecting, concerning or relating to how, when and by whom such materials were confiscated; the present location of confiscated materials; the identity of persons from whom the materials were confiscated; and incident or other reports or audits concerning the referenced confiscations; any radio or other logs discussing the alleged confiscations; any internal communications, or communications between DPS and any outside person or entity about the alleged confiscations; and any other public information reflecting, relating to or concerning the alleged confiscations; and

4. Any public information reflecting, relating to or concerning the publication of the DPS press release itself, including but not limited to any such information that reflects the identity of the author or authors of the press release; any drafts of the press release; and any internal communications, or communications between DPS and any other person or entity, about the press release (whether before or after its publication).