

in this matter, because TOMA is vital to the transparent functioning of all levels of government in Texas for the people. In addition, as part of the OAG's statutory duties, the OAG ensures Open Meetings training is made freely available, which is used to satisfy the Open Meetings training requirements of members of governmental bodies. Tex. Gov't Code § 551.005. The OAG is also responsible for enforcing the emergency meeting provisions of TOMA. Tex. Gov't Code §§ 551.142 and 551.144

- 2.2 Michael Lovins represents **Cleo Petricek** in this suit. Cleo Petricek resides and pays taxes within Travis County and is authorized to bring this suit pursuant to TOMA, Texas Government Code section 551.142. Plaintiff, Cleo Petricek, also represents the interests of other similarly situated individuals living within Travis County.
- 2.3 Michael Lovins represents **Douglas P. Keenan** in this suit. Douglas P. Keenan resides and pays taxes within Travis County and is authorized to bring this suit pursuant to the TOMA, Texas Government Code section 551.142. Plaintiff, Douglas P. Keenan, also represents the interests of other similarly situated individuals living within Travis County.
- 2.4 Defendant, Travis County Commissioners Court, is a governmental body subject to the Texas Open Meetings Act pursuant to Tex. Gov't Code § 551.003(3)(B) and may be served through Delia Garza, (Travis County Attorney), at 314 West 11th Street, Room 300, Austin, Texas 78701, Travis County, Texas, or wherever she may be found.
- 2.5 Defendants, Andy Brown, Jeff Travillion, Brigid Shea, Ann Howard, and Margaret Gomez, in their official capacity, are members of the Travis County Commissioners Court and are subject to the Texas Open Meetings Act pursuant to Tex. Gov't Code § 551.003(3)(B) and may be served through Delia Garza, (Travis County Attorney), at 314 West 11th Street, Room 300, Austin, Texas 78701, Travis County, Texas, or wherever she

may be found.

3. JURISDICTION AND VENUE

- 3.1 Plaintiffs seek non-monetary relief. *See*, Tex. R. Civ. P. 47(c). The relief sought is within the jurisdiction of this court. Tex. Const. art. V, § 8, Tex. Gov't Code §§ 24.007 and 24.008, and Tex. Civ. Prac. & Rem. Code § 65.021(a).
- 3.2 Venue of this lawsuit is proper in Travis County, Texas, pursuant to Tex. Gov't Code § 551.142, and pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) and (3), in that all or a substantial part of the events or omissions giving rise to this cause of action occurred in Travis County, and Travis County is the county of the Defendant Commissioners Court's principal office in this state.

4. AUTHORITY

- 4.1 Plaintiffs' request for injunctive relief is authorized by TOMA, Tex. Gov't Code § 551.142.

5. BACKGROUND

- 5.1 The Travis County Commissioners Court serves as the statutorily authorized policy-making and administrative branch of county government. *See* Tex. Loc. Gov't Code Chapter 81 and *see* [About Travis County Commissioners Court](https://www.traviscountytexas.gov/commissioners-court) on the Travis County Commissioners Court website (<https://www.traviscountytexas.gov/commissioners-court>).
- 5.2 The Travis County Commissioners Court directs the disbursement of county funds. Tex. Loc. Gov't Code § 113.041(a).
- 5.3 The Travis County Commissioners Court conducts its business in meetings held during scheduled terms set by the Commissioners Court. Tex. Loc. Gov't Code § 81.005.
- 5.4 The Travis County Commissioners Court is required to conduct its meetings in compliance

with TOMA. Tex. Gov't Code §§ 551.001(3)(B) and 551.002.

- 5.5 On or about March 19, 2024, the Travis County Commissioners Court conducted a public meeting at the Travis County Administration Building, Commissioners Courtroom, 700 Lavaca Street, Austin, TX 78701. The posted agenda included 36 items for the Commissioners Court to act upon or discuss, and other items for consideration by other county governing bodies upon adjournment of the Commissioners Court.
- 5.6 The end of the posted agenda included an “Executive Session” (also referred to as a closed session) that had two posted items: 35) receive briefing and take appropriate action regarding Travis County information security issues, and 36) receive briefing and take appropriate action regarding Travis County security and information security issues. The agenda listed Tex. Gov't Code § 551.071, Consultation with Attorney; Tex. Gov't Code § 551.076, Security; and Tex. Gov't Code § 551.089, IT Security as the legal bases for meeting in closed session.
- 5.7 Upon exiting the closed session, the Travis County Commissioners Court voted to “direct the Planning and Budgeting Office to process a budget adjustment totaling \$115,000.00 from the General Fund Allocated Reserve as an automatic budget adjustment, as discussed in the Executive Session.” *Minutes for the Travis County Commissioners Court March 19, 2024 Voting Session*, at Item 36 (Sept. 25, 2024). Subsequently, \$115,000 was transferred to the Travis County District Attorney’s Office, with at least some of the funds earmarked for the district attorney’s home security. See Plohetski, T. (2024) *Travis County quietly approves security funding for DA Garza*, available at: www.kvue.com (accessed Sept. 2, 2024).

6. VIOLATIONS

6.1 The Travis County Commissioners Court violated TOMA by failing to give adequate notice of the matters to be discussed during the posted “Executive Session,” especially considering the highly consequential decision to divert county funds to improve a private residence. The Court’s posted agenda for the meeting did not provide sufficient notice to the public that public funds would be considered for transfer to a private purpose. A governmental body must give the public advance notice of the subjects it will consider in an open meeting or a closed executive session. *Cox Enterprises, Inc. v. Bd. of Trustees of Austin Indep. Sch. Dist.*, 706 S.W.2d 956, 958 (Tex. 1986); *Porth v. Morgan*, 622 S.W.2d 470, 475–76 (Tex. App. 1981, writ ref’d n.r.e.). In *Cox Enterprises, Inc. v. Board of Trustees*, the Texas Supreme Court considered what constitutes adequate notice when matters are of special concern to the public. The Court noted that, although the meeting notice in that case included an item for personnel matters, the selection of a new superintendent was not in the same category as ordinary personnel matters, because it is a matter of special interest to the public; thus, the use of the term “personnel” was not sufficient to apprise the general public of the board’s proposed selection of a new superintendent. *Cox Enterprises, Inc.*, 706 S.W.2d 956, 959 (Tex. 1986). Here, the Travis County Commissioners Court provided notice they would be receiving briefing and taking appropriate action regarding *Travis County* information security issues and receiving briefing and taking appropriate action regarding *Travis County* security and information security issues. No member of the public could possibly infer from the posted agenda items that the Travis County Commissioners Court would be discussing the incredibly uncommon action of spending county funds on an elected official’s *private* residence,

which the county neither owns nor maintains, for security the county does not control. Given the unique nature of the action to be considered and the special interest the public would have in the matter, the posted agenda failed to give adequate notice to the public.

6.2 The Travis County Commissioners Court violated TOMA by improperly going into closed session. The Texas Open Meeting Act requires meetings be conducted openly unless statute specifically authorizes the governmental body to meet in closed session. Tex. Gov't Code § 551.002. When the Commissioners Court went into closed session, the applicable statutory exceptions that were cited on the agenda and that were announced at the meeting were insufficient to authorize a closed session to deliberate the diversion of public funds for private use. *See* Tex. Gov't Code §§ 551.071 and 551.076. As to Section 551.071: TOMA authorizes a governmental body to consult with an attorney in closed session only to seek advice about pending or contemplated litigation; a settlement offer; or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter. Tex. Gov't Code § 551.071. Even if the Commissioners Court was obtaining legal advice from its lawyer in closed session, a reference in the agenda to Section 551.071 would be insufficient as notice to the public that such advice would relate to the expenditure of public funds for private purposes. Most importantly, deliberating and deciding to spend county funds on security upgrades to the district attorney's personal residence clearly does not fall within this exception. As to Section 551.076: deliberations "concerning the deployment, or specific occasions for implementation, of security personnel or devices" does not encompass deliberating the expenditure of county funds on security upgrades for a private residence. *See* Tex. Gov't Code § 551.076. The plain meaning of deployment or specific

occasions for implementation of “security personnel” would clearly implicate the assignment of security employees for public purposes, such as at the courthouse, which was not done here. The deployment on specific occasions for implementation of “security devices” likewise does not apply here; the plain meaning and context of this provision is understood as implementing security devices on *county* property. It would be an unreasonable reading of the statute, and certainly not one the public could be understood to have had, to add to the understanding of the statute that security upgrades to any property within the county, irrespective of the county’s ownership or control of that property, would be covered by the statute.

- 6.3 The Travis County Commissioners Court violated the Texas Open Meetings Act by the act of voting to divert county funds to security for the district attorney’s personal residence after leaving closed session. Even if the posted agenda provided adequate notice to the public that it would deliberate security on the district attorney’s private residence, which it did not, and even if the Commissioners Court properly met in closed session under a statutory exception, which it did not, the agenda clearly did not notify the public that the Travis County Commissioners Court would then consider reallocating a sum of public money from the county budget to pay for those upgrades. To date, the public still does not know how much of the \$115,000 that the Commissioners Court voted to be transferred to the district attorney’s office was for security upgrades to his personal residence. As a result of this lack of notice, the public was also deprived of the opportunity to comment on that action. As discussed above, when an agenda item is of special concern, the governmental body has a duty to provide enough detail to the public to be aware of such a significant action. *Cox Enterprises, Inc.*, 706 S.W.2d 956 (Tex. 1986). That notice is not meant to be

just for show but protects the ability of the people to participate in their government. No portion of the posted agenda could possibly give sufficient notice to the public that the Travis County Commissioners Court was going to come out of closed session and immediately vote to divert county funds to pay for security improvements to a private residence. Because the agenda lacked sufficient notice anywhere on the agenda for the deliberation on and vote to divert funds, the appropriate next step after coming out of closed session would have been for the Commissioners Court to clearly post the item as a budget matter for consideration and possible action at the next open meeting. The Travis County Commissioners Court clearly knows this process, as it posted Agenda Item 11 to consider and take appropriate action on budget amendments, transfers, and discussion items at the same meeting, but it conspicuously failed to include transferring funds to pay for security upgrades at a private residence in this conversation.

7. INJUNCTIVE RELIEF

- 7.1 The OAG is exempt from filing a bond. Tex. Civ. Prac. & Rem. Code § 6.001.
- 7.2 Plaintiffs have pleaded a valid cause of action and request temporary and permanent injunctive relief. Plaintiffs have a probable right to such relief because the allegations herein show the Defendants have violated the Texas Open Meetings Act. As a statute is being violated, the doctrine of balancing the equities has no application and it is within the province of the district court to restrain it. *State v. Texas Pet Foods, Inc.*, 591 S.W.2d 800, 805 (Tex. 1979). Further, a movant for injunctive relief is not required to meet the common law criteria to obtain injunctive relief when a statute expressly authorizes injunctive relief, such as TOMA does, here. *See, Sonwalkar v. St. Luke's Sugar Land Partnership, L.L.P.*, 394 S.W.3d 186, 197 (Tex. App.—Houston [1st Dist.] 2012, no pet.);

Tex. Gov't Code § 551.142(a). Nonetheless, in this case, the injury being caused to the public is also imminent and irreparable as contracts could be being bid, entered, and invoiced; personnel hired; and devices purchased. Further, civil penalties would not serve as an adequate remedy as such penalties would not return funds to county coffers and would not restore public trust in the county's actions. The only possible remedy for this type of injury is enjoining the expenditure of county funds on the district attorney's personal residence. Injunctive relief is proper under Tex. Gov't Code § 551.142; Tex. Civ. Prac. & Rem. Code § 65.011; and Tex. R. Civ. P. 680.

7.3 Pursuant to Tex. Gov't Code § 551.142, Plaintiff may obtain temporary and permanent injunctive relief to restrain the Defendants, who are in violation of the Texas Open Meetings Act. Accordingly, Plaintiff seeks appropriate injunctive orders to reverse violations of the Texas Open Meetings Act, invalidate the action of the Commissioners Court that authorized the diversion of funds in the county budget to the district attorney for upgrades at his private residence, and to prevent the expenditure of public funds on a private residence pursuant to those violative actions.

7.4 Temporary Restraining Order. Plaintiffs request a Temporary Restraining Order (TRO) (a) preventing Defendants from effectuating, enforcing, or taking any action, including entering into agreements or approving purchase orders, or paying invoices, or using county resources in furtherance of the contested action, namely the Commissioners Court's deliberation and votes on March 19, 2024, that purported to authorize the transfer or reallocation of county funds to the district attorney for security at the district attorney's residence; and (b) requiring Defendants to comply with the Texas Open Meetings

7.5 Temporary Injunction. Plaintiffs request that upon the expiration of the TRO and after a

hearing, the court issue a temporary injunction (a) preventing Defendants from effectuating, enforcing, or taking any action, including entering into agreements or approving purchase orders, or paying invoices, or using county resources in furtherance of the contested action, namely the Commissioners Court’s deliberation and votes on March 19, 2024, that purported to authorize the transfer or reallocation of county funds to the district attorney for security at the district attorney’s residence; and (b) requiring Defendants to comply with the Texas Open Meetings Act;

7.6 Permanent Injunction. Plaintiffs request that upon final trial, a permanent injunction be issued (a) reversing the Commissioners Court’s action that approved the reallocation of funds from the county budget to the district attorney’s office on March 19, 2024 after the closed session; (b) preventing Defendants from effectuating, enforcing, or taking any action, including entering into agreements or approving purchase orders, or paying invoices, in furtherance of the contested action, namely the Commissioners Court’s deliberation and votes on March 19, 2024, that purported to authorize the transfer or reallocation of county funds to the district attorney for security at the district attorney’s residence; and (c) requiring Defendants to comply with the Texas Open Meetings Act.

**8. DECLARATION OF THE COMMISSIONERS COURT’S ACTION
TAKEN IN VIOLATION OF TOMA AS VOID**

8.1 Plaintiffs request the court declare void the actions the Commissioners Court took in violation of TOMA. An action taken by a governmental body in violation of TOMA is voidable. Tex. Gov’t Code §551.141. The Commissioners Court voted to approve the reallocation or transfer of county funds to the district attorney’s office after the closed session at the March 19, 2024, Commissioners Court’s meeting. This action was taken in violation of TOMA because the meeting agenda was inadequate to notify the public that

the Commissioners Court would deliberate security upgrades at the private residence of the district attorney or that the Commissioners Court would deliberate, much less vote, to divert public funds from the county budget to the district attorney's office to be used for the private residence of the district attorney.

9. ATTORNEYS' FEES AND COSTS

9.1 This is an action brought by Plaintiffs for injunctive relief under Tex. Gov't Code § 551.142(a), and Plaintiffs are therefore entitled to recover and collect reasonable attorneys' fees and costs. Tex. Gov't Code § 551.142(b). In the event of an appeal to the Court of Appeals or to the Supreme Court, Plaintiffs would be entitled to recover and collect additional reasonable attorneys' fees and court costs.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the court enter judgment for Plaintiffs and award Plaintiffs the following relief:

1. A Temporary Restraining Order, Temporary Injunction, and Permanent Injunction as described in Section 7, above;
2. Invalidation of the actions taken by the Commissioners Court on March 19, 2024, as described in Section 8, above;
3. Attorneys' fees and costs as described in Section 9, above;
4. All other appropriate relief to which Plaintiffs are justly entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

JAMES LLOYD
Deputy Attorney General for Civil Litigation

ERNEST C. GARCIA
Chief, Administrative Law Division

/s/ Steven Ogle _____

STEVEN OGLE
Assistant Attorney General
Texas State Bar No. 24044477
Office of the Attorney General of Texas
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4151
Facsimile: (512) 320-0167
steven.ogle@oag.texas.gov

*Attorney for Plaintiff Ken Paxton,
Attorney General of Texas*

/s/ Michael Lovins (signed with permission)

MICHAEL LOVINS
Texas State Bar No. 24032555
Lovins Trosclair, PLLC
1301 S. Capitol of Texas Hwy, Ste. 136A
West Lake Hills, TX 78746-6548
Telephone (512) 535-1649
michael@llegalteam.com

*Attorney for Plaintiffs, Cleo Petricek, and Douglas
P. Keenan*

CAUSE NO. _____

**KEN PAXTON, ATTORNEY GENERAL
OF TEXAS, and CLEO PETRICEK, and
DOUGLAS P. KEENAN, Individually,
*Plaintiffs,***

§
§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

v.

**TRAVIS COUNTY COMMISSIONERS
COURT, and ANDY BROWN, JEFF
TRAVILLION, BRIGID SHEA, ANN
HOWARD, and MARGARET GOMEZ,
each in their OFFICIAL capacity as a
TRAVIS COUNTY COMMISSIONER,
*Defendants.***

TRAVIS COUNTY, TEXAS

____ **JUDICIAL DISTRICT**

VERIFICATION / DECLARATION

My name is CLEO PETRICEK, and I am over eighteen years of age, am of sound mind, have not been convicted of a felony, and am capable of making this declaration. I live and pay taxes in Tavis County. I have read the above Original Petition and Application for Temporary and Permanent Injunctive Relief. I declare under penalty of perjury that the facts as stated in the Petition are true and correct.

Executed in Travis County, State of Texas on the 26th day of September, 2024.



CLEO PETRICEK, Declarant

