

learning in Texas. *See* Mike Gross Aff., ¶2. TSEU provides a voice for government employees' expression of their employment-related concerns. *Id.* TSEU and its membership are greatly concerned about the increased risk of identity theft inherent in providing to the public under the Public Information Act, Tex. Gov't Code, Chapter 552 ("Act"), the date of a government employee's birth. *Id.* at ¶3.

As indicated by affidavits submitted by the Comptroller in support of her motion, and consistent with common knowledge and with the numerous website warnings posted by law enforcement entities across the Nation, identity theft has become a significant, and growing, criminal activity. *See* Comptroller's Motion, p. 7-8; Affidavit of Barbara Collins (Texas government employee whose identity was stolen twice); Affidavit of David Baker (Highway Patrolman, Texas Department of Public Safety); and Affidavit of Marvin Mead (Crime Analyst, Fraud Investigation Unit, Texas Department of Public Safety). An individual's date of birth is a key piece of information which, when combined with the other identifying information which the Comptroller has already provided under the Act, will allow an identity thief to easily steal an identity. *See* Affidavit of Crime Analyst Marvin Mead. The release of the date of birth, combined with the other information already provided, "creates a much higher risk of identity theft for state employees, than if the date of birth information were not released." *Id.*

If the Court finds that the News is entitled under the Act to obtain the date of birth of every state employee, then any identity thief would be entitled to the date of birth under the Act by simply requesting it, in addition to other identifying information, and government employees' security in possessing their own identities would be significantly compromised. *See* Affidavit of Crime Analyst

Marvin Mead. The theft of an individual's identity can have devastating consequences for that individual, including the depletion of the individual's bank accounts through the use of counterfeit checks, the necessity to defend against criminal charges for crimes committed by the thief in the individual's name, the need to correct credit reports, and a host of other consequences. *See* Affidavits of Crime Analyst Marvin Mead, and Highway Patrolman David Baker. No government employee should be subject to such increased risk of severe harm merely for being a public servant.

Unquestionably, open government is essential to the proper functioning of a democracy. However, as demonstrated by the affidavit of Jesse L. Soliz submitted by the Comptroller in support of her motion, open government here can be achieved without inflicting on public servants a heightened exposure to the theft of their identities and its cascading damage. As demonstrated by Mr. Soliz's simple manipulation of the data already provided to the News, every Texas state employee can be distinguished from every other employee, and every employee's identity can be confirmed, without the release to the News of every Texas state employee's date of birth.

Accordingly, TSEU urges the Court to grant the Comptroller's motion and to deny the News's motion.

Respectfully submitted,



Glenda L. Pittman

Texas State Bar No. 16050150

PITTMAN & FINK, P.C.

4601 Spicewood Springs Road

Building 3, Suite 100

Austin, Texas 78759

(512) 499-0902

(512) 499-0952 (fax)

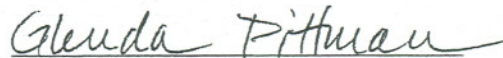
Attorneys for Texas State Employees Union

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing pleading has been served by facsimile and U.S. First Class Mail, this 25th day of July, 2006, on the following:

Maureen Powers
Assistant Attorney General
Chief, Financial Litigation Division
P.O. Box 12548
Austin, Texas 78711-2548
(512) 477-2348 (fax); and

Paul C. Watler
Brandy M. Wingate
Eric R. Hail
Jenkins & Gilchrist, P.C.
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202-2799
(214) 855-4300 (fax)


Glenda L. Pittman