

THE STATE OF TEXAS

§

COUNTY OF TRAVIS

§

SEARCH WARRANT

Filed in The District Court
of Travis County, Texas

SEP 18 2008

At 1:55 P.M.
Amalia Rodriguez-Mendoza, Clerk

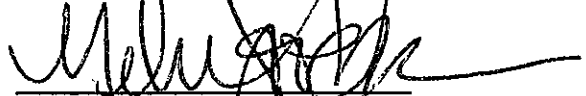
The State of Texas: To the Sheriff or any Peace Officer of Travis County, Texas, or any Peace Officer of the State of Texas:

Whereas, the affiant whose name appears on the affidavit attached hereto is a peace officer under the laws of Texas and did heretofore this day subscribe and swear to said affidavit before me, and whereas I find that the verified facts stated by affiant in said affidavit show that affiant has probable cause for the belief he/she expresses herein and establishes existence of proper grounds for issuance of this Warrant;

Now, Therefore, you are commanded to search the suspected items as set forth in the affidavit for search warrant for computer data files copied from the Texas Lottery Commission.

Herein fail not, but have you then and there this Warrant within three days, exclusive of the day of its execution, with your return thereon, showing how you have executed same.

Issued this the 18 day of Sept 2008 at 1:50 o'clock P.M. to certify which witness my hand this day.


Judge, Travis County, Texas

THE STATE OF TEXAS

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COUNTY OF TRAVIS

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Filed in The District Court
of Travis County, Texas

SEP 18 2008

At L. J. S. M.
Amalia Rodriguez-Mendoza, Clerk**AFFIDAVIT FOR SEARCH WARRANT**

The undersigned Affiant, Martin J. Phelan, being a Peace Officer under the laws of the State of Texas, and being duly sworn on oath, makes the following statements and accusations:

1. THERE IS IN TRAVIS COUNTY, TEXAS, SUSPECTED ITEMS DESCRIBED AND LOCATED AS FOLLOWS:

Two full size, recordable compact disks (CD-R's) secured at the Texas Comptroller's Criminal Investigation Division Headquarters located at 208 E. 10th Street, Room 206, Austin, Travis County, Texas 78701 described as:

- 1) a single TDK brand recordable compact disk (CD-R) inside a plastic jewel case with a paper insert marked "TX Lottery 12/6/2007" and
- 2) a single Imation brand recordable compact disk (CD-R) inside a plastic jewel case with a paper insert marked "TX Lottery Files".

2. SAID SUSPECTED ITEMS WERE OBSERVED IN PLAIN VIEW AND HELD AS EVIDENCE FROM THE COMPTROLLER OFFICE WORKSPACE CUBICLE OF THE FOLLOWING NAMED AND/OR DESCRIBED SUSPECTED PARTY:

Joseph Anthony Mueggenborg, a white male, date of birth: May 30, 1969, holding Texas Driver License # 13631093.

3. THE CRIMINAL OFFENSES BELIEVED VIOLATED & UNDER INVESTIGATION ARE:

Texas Penal Code § 32.51 - Fraudulent Use Or Possession Of Identifying Information (50 or more), a Felony of the First Degree.

4. AFFIANT HAS PROBABLE CAUSE FOR SAID BELIEF BY REASON OF THE FOLLOWING FACTS:

Affiant is a Lieutenant-Investigator with the Criminal Investigation Division of the Texas Comptroller's Office and has been so employed for five years. Affiant has 24 years of law enforcement experience and holds a Texas Master Peace Officer's Certification as well as an undergraduate degree in Criminal Justice. As an Investigator for the Texas Comptroller's Office, one of Affiant's functions involves investigating suspected violations of the Texas Penal Code alleged to have been committed by Texas Comptroller employees.

On August 19, 2008, Texas Comptroller Internal Auditors told Affiant that their division initiated an administrative investigation of Joseph Anthony Mueggenborg, a Texas Comptroller Systems Analysis IV, on August 13, 2008, based upon confidential information that Mueggenborg was a potential information security risk to the agency.

Pursuant to their administrative investigation, an "image" of Mueggenborg's Comptroller-issued, desktop, work computer was created and examined. Their examination revealed an electronic file folder titled "C:\Lottery" on the computer's hard drive which stored the personal identifying information of numerous Texas Lottery Commission employees, Texas Lottery prizewinners, and Texas Lottery retailers including names, social

AFFIDAVIT FOR SEARCH WARRANT (continued)

security numbers, and addresses. Internal Auditors told Affiant that Mueggenborg was previously employed by the Texas Lottery Commission as a Programmer/Analyst between 1999 and 2007. Affiant spoke with Janine Mays, Director of Human Resources, Texas Lottery Commission who said that Mueggenborg had access to confidential Lottery financial computer data files while employed, but was not authorized to remove or retain the computer data files after resigning from the Texas Lottery Commission. As a result of Internal Audit's investigation, Mueggenborg's employment with the Texas Comptroller was terminated on August 19, 2008.

Affiant initiated a criminal investigation, took possession of the "imaged" hard drive from Internal Audit, and secured Mueggenborg's Comptroller-issued work computer from his workspace cubicle located on the 8th floor of the Comptroller's LBJ Building, 111 E. 17th Street, Austin, Travis County, Texas. Mueggenborg did not share this workspace cubicle with anyone. Additionally, Affiant boxed up Mueggenborg's personal effects in the workstation cubicle for inventory and return to Mueggenborg.

While boxing Mueggenborg's property, two recordable compact discs (CD-R's), as described under Section 1, were observed in plain view in an unsecured, overhead bin among Mueggenborg's property. The CD-R's were marked with handwritten titles indicating that they contained computer data files related to the Texas Lottery Commission.

Affiant conducted an independent examination of Mueggenborg's Comptroller-issued work computer. During examination, the following computer data files were identified in a directory named "C:\Lottery" which contained:

1. *employee_master.xls*: 306 Texas Lottery Commission employees names, social security numbers, race/sex, home addresses, home telephone numbers, hire date, job titles, among others.
2. *855.xls*: 313 Texas Lottery Commission employees names, social security numbers, years & months of service, longevity pay data.
3. *winners_06_except_office_200.xls*: 27,075 mid-level Texas Lottery prizewinners names, social security numbers, home addresses, amount won & paid, among others.
4. *newretailers.txt*: 534 new Texas Lottery retailers names and social security numbers.

On August 25, 2008, Affiant conducted a non-custodial interview of Joseph Anthony Mueggenborg which resulted in a written, voluntary statement wherein Mueggenborg writes that "*Just prior to leaving the Lottery, I indiscriminately copied all the files from the "My Documents" folder to a CD/DVD which I carried to subsequent jobs at the Texas Department of Transportation and Texas Comptroller's Office where I copied the CD/DVD files from the "My Documents" folder to a created folder on my new hard drive titled "Lottery" for the purpose of retaining personal files and computer programming work for possible future reference as a programmer at other state agencies.*" Mueggenborg was asked to provide Consent to Search the two recordable compact discs (CD-R's) as described under Section 1, but declined.

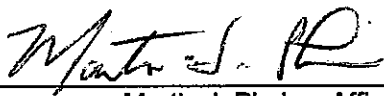
AFFIDAVIT FOR SEARCH WARRANT (continued)

5. PROPERTY OR ITEMS TO BE SEIZED:

Based on the foregoing, Affiant respectfully submits that there is probable cause to believe and Affiant hereby charges and accuses that the following property or items, which constitute evidence of violations of Texas Penal Code § 32.51 - Fraudulent Use Or Possession Of Identifying Information (50 or more), a Felony of the First Degree, will be found contained on the Suspected Items, to wit:

Computer data files copied from the Texas Lottery Commission by Joseph Anthony Mueggenborg evidencing the possession and transfer of personal identifying information.

WHEREFORE, Affiant asks for issuance of a Warrant that will authorize him to search said Suspected Items for the property described above and seize same.



Martin J. Phelan, Affiant

SWORN TO AND SUBSCRIBED before me by said Affiant on this the 18 day of September, 2008.



Judge, Travis County, Texas

THE STATE OF TEXAS

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of Travis County, Texas

COUNTY OF TRAVIS

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SEP 18 2008

**OFFICER'S RETURN AND INVENTORY
SEARCH WARRANT**

At 1:58 M.
Amalia Rodriguez-Mendoza, Clerk

My name is Martin J. Phelan and I am commissioned as a peace officer by Comptroller's Office for the State of Texas.

The attached Search Warrant came to hand on the day it was issued and it was executed on the 18th day of September, 2008, by conducting the search directed therein and by seizing during such search the following described property: Computer data files contained on:

- 1) a single TDK brand recordable compact disk (CD-R) inside a plastic jewel case with a paper insert marked "TX Lottery 12/6/2007" and
- 2) a single Imation brand recordable compact disk (CD-R) inside a plastic jewel case with a paper insert marked "TX Lottery Files".



Affiant