

TY CLEVINGER

*Attorney at Law*  
1095 Meadow Hill Drive  
Lavon, Texas 75166

*telephone: 979.985.5289*  
*facsimile: 979.530.9523*

*tyclevenger@yahoo.com*  
*Texas Bar No. 24034380*

April 1, 2015

Col. Steven McGraw, Director  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-4087

Re: Trooper Billy L. Spears

Col. McGraw:

As you know, you recently overturned disciplinary charges against Trooper Billy L. Spears, reversing the decision of everyone from his lieutenant to the chief of the highway patrol. I write to request your assistance in preventing further retaliation against Trooper Spears.

On March 24, 2015, Trooper Spears was officially counseled by his sergeant and lieutenant for "deficiencies" because he was photographed standing next to Calvin Broadus, a.k.a. Snoop Dogg, at the South by Southwest conference in Austin. The counseling record reads as follows: "While working a secondary employment job, Trooper Spears took a photo with a public figure who has a well-known criminal background including numerous drug charges. The public figure posted the photo on social media and it reflects poorly on the Agency."

In reality, Trooper Spears did not take the photograph, nor did he request it. He was working security backstage (with the advance approval of DPS) when Snoop Dogg requested the picture. Snoop Dogg's publicist took the photograph and it was posted on Instagram with the caption "Me n my deputy dogg." Moreover, Trooper Spears was not aware of Snoop Dogg's criminal history, nor was he aware that DPS personnel are expected to run criminal background checks of everyone who requests a picture.

The surrounding circumstances of this disciplinary action make it all the more obvious that it was an act of retaliation. At approximately 9 p.m., Trooper Spears was informed by Sgt. Michael Sparks that Lt. Jimmy Jackson would be driving from Tyler to Gilmer to serve him with a copy of the counseling form. Sgt. Sparks also told Trooper Spears that DPS is now requiring the presence of two superior officers for any incident involving him. I doubt there are any other troopers who must be served by at least two superior officers, and I must wonder why Trooper Spears was singled out for special treatment. I must also ask what is so special about Trooper Spears that a lieutenant would drive 80 miles round trip to serve him at 9:24 p.m. in the evening.

According to Trooper Spears, shortly before he was served with the counseling form, Sgt. Sparks said he was looking at Trooper Spears from behind to see if he had a target on his back. Sgt. Sparks recounted a discussion with Lt. Jackson wherein they both said they probably would have consented to having their pictures made with Snoop Dogg, and he further added that both he and Lt. Jackson disagreed with the decision to discipline Trooper Spears. In other words, even your own personnel recognize that someone is retaliating against Trooper Spears.

According to Sgt. Sparks, the disciplinary action was initiated by Asst. Director David Baker after Trooper Spears's photograph was detected during routine scanning of social media. Since nothing in the Instagram post identifies Trooper Spears or his agency, I must wonder whether DPS is using its facial recognition software to troll for pictures of DPS employees (or perhaps just targeted DPS employees). Regardless, Trooper Spears may bring civil claims against DPS personnel pursuant to the Texas Whistleblower Act, Tex. Gov't Code 554.001 et seq., and he may also bring federal civil rights claims for retaliation pursuant to 42 U.S.C. § 1983. Moreover, DPS personnel may be criminally prosecuted for violating Texas Penal Code §§ 39.02 (abuse of official capacity) and 39.03 (official oppression) as well as federal civil rights statutes. *See* 18 U.S.C. §§ 241 and 241.

I must insist that you vacate the February 4, 2015 and March 24, 2015 HR-31 forms and remove them from Trooper Spears's file. I also request that you inform me of the steps that you intend to take, if any, to prevent further retaliation against Trooper Spears. The limitations deadline for a Whistleblower Act lawsuit expires in three weeks, so I request that you respond not later than April 7, 2015. Otherwise, we may proceed with litigation, in which case we will ask the court to enjoin DPS from further acts of retaliation.

Finally, I request the opportunity to view the following documents, records, communications or other data (regardless of format, *e.g.*, paper or electronic) pursuant to the Texas Public Information Act:

1. All policies and/or guidelines governing the use of facial recognition software by DPS personnel. This request includes, but is not limited to, e-mail communications setting forth or discussing any such policies or guidelines.
2. Records, documents, or communications reflecting the name and/or purchase price of facial recognition software used by DPS personnel.
3. Records, documents, or communications reflecting agreements with other agencies (*e.g.*, FBI or local police) for the use of facial recognition software. This request includes, but is not limited to, records or documents showing whether other agencies are allowed to use photographs maintained by DPS (*e.g.*, drivers license photos) for purposes of facial recognition searches.
4. Records, documents, or communications concerning all photographs of DPS personnel that were flagged by facial recognition software since January 1, 2014.

5. Records, documents, or communications indicating whether DPS searches social media for photographs of all employees, targeted employees, or any other identifiable groups (e.g., fugitives or missing children).
6. Records, documents, or communications concerning all other incidents of counseling or disciplinary action against DPS personnel since January 1, 2014 that resulted from photographs posted on social media.
7. Records, documents, or communications concerning the March 24, 2015 counseling of Trooper Spears. This request includes, but is not limited to, records or documents indicating how Trooper Spears's photograph came to the attention of DPS supervisors.
8. Records, documents, or communications concerning whether more than one supervisory officer must be present for any counseling or disciplinary activities involving Trooper Spears.
9. Records, documents, or communications generated in response to my March 30, 2015 email from "[tyclevenger@yahoo.com](mailto:tyclevenger@yahoo.com)" to "[media@dps.texas.gov](mailto:media@dps.texas.gov)." This request includes, but is not limited to, draft responses or talking points memoranda.

I can be reached on my cell phone at [REDACTED] if you wish to discuss these matters further. Thank you in advance for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal flourish extending to the right.

Ty Clevenger

cc: Texas Public Safety Commissioners  
Mr. Gregg Cox, Director of Special Prosecutions  
Travis County District Attorney's Office  
Ms. Ashley Hoff, Chief, Austin Division  
Office of the U.S. Attorney for the Western District of Texas