

**COPY**

CAUSE NO. G V503100

GREG ABBOTT, ATTORNEY GENERAL  
OF TEXAS,  
Petitioner,

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§  
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§  
§

IN THE DISTRICT COURT OF

V.

TRAVIS COUNTY, TEXAS

FRIO COUNTY SHERIFF'S OFFICE,  
Respondent.

250 JUDICIAL DISTRICT

**PETITION FOR WRIT OF MANDAMUS**

TO THE HONORABLE JUDGE OF SAID COURT:

Now Comes Petitioner Greg Abbott, Attorney General of Texas, and files his Petition for Writ of Mandamus against Frio County Sheriff's Office (Sheriff's Office).

**FILED**  
JUL 11 AM 11:32  
*Umarini Trevino, Secretary*  
DISTRICT CLERK  
TRAVIS COUNTY, TEXAS

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to mandamus the Sheriff's Office pursuant to the Public Information Act (PIA), Tex. Gov't Code § 552.321(a) (West 2004).

2. Venue is Travis County, Texas. Tex. Gov't Code § 552.321(b) (West 2004):

**PARTIES AND SERVICE**

3. Petitioner is Greg Abbott, Attorney General of Texas.

4. Respondent is the Frio County Sheriff's Office. Respondent may be served by and through Lionel Trevino, Sheriff, Frio County, 502 S. Cedar St., Pearsall, TX, 78061, telephone: 830-334-3311.

**CAUSE OF ACTION**

5. The Attorney General, petitioner, seeks a writ of mandamus compelling the Frio County Sheriff's Office, respondent, to provide to the requestor, Robert Herrera, Jr., public information that he has requested, that Sheriff Trevino and his deputies and employees refuse to

provide, and that, as a matter of law, is subject to public disclosure under the PIA. Tex. Gov't Code § 552.021 (West 2004).

6. Sheriff Trevino is the public information officer for the Sheriff's Office. Tex. Gov't Code § 552.201(a) (West 2004). Sheriff Trevino is responsible on behalf of the Sheriff's Office for the release of public information as required by the PIA. Tex. Gov't Code § 552.204 (West 2004).

7. Sheriff Trevino has failed to comply with the PIA. He has withheld public information from a requestor that the Attorney General has determined is subject to disclosure.

8. Sheriff Trevino did not file suit within 30 days of these Attorney General rulings to seek relief from compliance. Tex. Gov't Code § 552.324(b) (West 2004). Accordingly, the Sheriff was required to comply with the decisions of the Attorney General and disclose the requested information promptly to the requestor. Tex. Gov't Code § 552.324(b).

## FACTS

### **Mr. Herrera's November 23, 2003 request**

9. On or about November 23, 2003, Robert Herrera, Jr., a citizen of San Antonio, Texas, requested public information from Sheriff Trevino, regarding the bail bond business in [Frio] County. Mr. Herrera requested 10 items of information." Exhibit A.

10. Mr. Herrera made two other requests on or about January 12, 2004, one to the Sheriff and one to the Frio County Judge.

11. Almost two months after the first request, the Sheriff sought an open records ruling from the Attorney General. The Sheriff sought rulings also on the request to the County (20 days after receiving the request) and on the second request made to him, for which the request for a ruling was made timely.

12. The Attorney General ruled that the information requested in all three of Mr.

Herrera's requests had to be disclosed, because the Sheriff had failed to submit the information being requested to his Office as required by Tex. Gov't Code §§ 552.301(e), 552.302, 552.303(a); *see* Letter Rulings OR2004-2317, OR2004-2682, and OR2004-2272. The information responsive to the November 23, 2004 and January 12, 2004 requests to the Sheriff and the County Judge was also presumed open because the requests to the Attorney General were untimely. Tex. Gov't Code §§ 552.301, 552.302.

13. Frio County did not file suit against the Attorney General regarding the three rulings. By August 2004, Mr. Herrera had received no information from the County in response to his three requests. Mr. Herrera complained to the OAG's open records hotline.

14. Since September 10, 2004, the OAG has worked to obtain disclosure of the requested information without litigation. Mr. Herrera also tried to work out a mutually agreeable arrangement for disclosure of the information with the Sheriff's Office. The County made available the information requested of it. The Sheriff responded only partially. Mr. Herrera was scheduled to view the requested information on December 12, 2004, but upon his arrival at the Sheriff's Office, Sgt. John Solis said to him "they were not going to give up the information." Mr. Herrera patiently continued to negotiate with the Sheriff's Office to view the requested public information.

15. On April 12, 2005, Sgt. Solis told Assistant Attorney General Thornton Wood that the dispatch records requested were too voluminous to produce, that he personally would not allow personal information of himself and other employees to be disclosed; and that the Sheriff's Office had inadequate staff to redact and release information in a timely manner.

16. As of the date of the filing of this petition, according to Mr. Herrera, the Sheriff has refused to allow Mr. Herrera to inspect original records that are responsive to items 1, 5, 6, 7, 8, and 9 of Mr. Herrera's November 23, 2003 request for information and/or has refused to provide all of

the information that is responsive to this request of Mr. Herrera.

**Mr. Herrera's April 5 request**

17. On April 5, 2005, Mr. Herrera faxed to the Sheriff, a new request for public information, seeking completed bail bond forms submitted by Morales Bail Bonds, from January 1, 2004 through September 1, 2004 and from January 21, 2005 through April 5, 2005. Exhibit B. To date, the Sheriff has not provided this information to Mr. Herrera or asked for an Attorney General's ruling. Instead, the Sheriff has engaged in actions in violation of the spirit and letter of the PIA, including continuing to withhold public information.

18. On or about April 17, 2005, Sgt. Solis sent Mr. Herrera a form response that the requested information was available for inspection and that he should call him to arrange a mutually convenient time for inspection of the requested information. Exhibit C. Mr. Herrera called Sgt. Solis two days later and set a time for inspection on April 27, 2005.

19. On or about April 27, 2005, Sgt. Solis allowed Mr. Herrera to inspect some information responsive to his request, but he only allowed him to view the records for approximately 2 hours. Mr. Herrera and Sgt. Solis agreed on another date and time (May 3, 10:00 a.m.) to continue the inspection. On the morning of May 3, Mr. Herrera called Sgt. Solis to confirm that they were still scheduled for 10:00 a.m. Sgt. Solis told him to come on in. Mr. Herrera drove 50 miles to the Sheriff's Office in Pearsall, Texas. As he was arriving in Pearsall, Mr. Herrera received a call on his cell phone; Sgt. Solis was calling to cancel the meeting. Sgt. Solis agreed to another meeting, rescheduled for two weeks later.

20. On May 16, 2005, the day before the next scheduled appointment, Mr. Herrera called and confirmed with Sgt. Solis the appointment for the next day. The next morning, around 9:00 a.m., Mr. Herrera called Sgt. Solis again to confirm the meeting. He was told by the dispatcher that

Sgt. Solis was not in. He asked the dispatcher to tell Sgt. Solis that he would be there at 10:00 a.m., the appointed time. Mr. Herrera drove 50 miles to the Sheriff's Office. When he arrived for his scheduled appointment, Sgt. Solis was not there; he was at ribbon cutting ceremony for a new jail facility. Again, Mr. Herrera was forced to drive another 100 miles, round trip, without being allowed to inspect the records as he had been promised by Sgt. Solis.

### **RELIEF REQUESTED**

21. The Attorney General seeks a writ of mandamus to compel the Sheriff's Office to provide to Mr. Herrera for inspection, or copies, if requested, all records maintained by the Sheriff's Office that contain information responsive to Mr. Herrera's requests for information, dated November 23, 2003 and April 5, 2005. If the records contain information that may be personal private information of an employee, the Sheriff must mark that information and provide it to the Attorney General or the Court for a determination as to its availability.

22. The fact that a request may be burdensome or expensive with which to comply does not excuse the Sheriff's Office from providing the information. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex.1976). "The custodian is not authorized to withhold information merely because he considers it to be exempt from disclosure. That part of the requested record which contains public information must be disclosed immediately." *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323-24 (Tex.App.-Houston [1st Dist.] 1984, no writ).

### **CLAIM FOR ATTORNEY FEES**

23. The Attorney General has required the services of an attorney in prosecuting this lawsuit. He is being represented by the undersigned Assistant Attorneys General in this matter. If he prevails in this lawsuit, he requests reasonable attorney fees and litigation costs pursuant to Tex.

Gov't Code § 552.323(a) (West 2004). Respondent is flagrantly ignoring the PIA. Respondent is not acting on reasonable reliance on any court order or judgment, a published opinion of an appellate court, or a written decision of the Attorney General. *Id.* Accordingly, attorney fees and costs are mandatory if the Attorney General prevails on his claim for writ of mandamus. *Id.*

**PRAYER**

WHEREFORE PREMISES CONSIDERED, Petitioner Greg Abbott, Attorney General of Texas, respectfully asks that the Frio County Sheriff's Office be summoned to appear and show cause why a writ of mandamus should not be issued compelling the Frio County Sheriff's Office to provide immediately to Mr. Herrera for inspection, or copies, if requested, all records maintained by the Sheriff's Office that contain information responsive to Mr. Herrera's requests for information, dated November 23, 2003 and April 5, 2005. The Attorney General asks also that all costs of litigation and attorney fees be adjudged against Respondent.

Petitioner further prays for such other and further relief, both general and special, at law and in equity, to which he may be justly entitled.

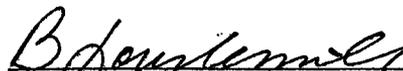
Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

BARRY R. McBEE  
First Assistant Attorney General

EDWARD D. BURBACH  
Deputy Attorney General for Litigation

BARBARA B. DEANE  
Chief, Administrative Law Division

  
BRENDA LOUDERMILK

Chief, Open Records Litigation  
Administrative Law Division  
P.O. Box 12548  
Austin, Texas 78711-2548  
Telephone: (512) 475-4292  
Fax: (512) 320-0167  
State Bar No. 12585600  
ATTORNEYS FOR PETITIONER

**VERIFICATION**

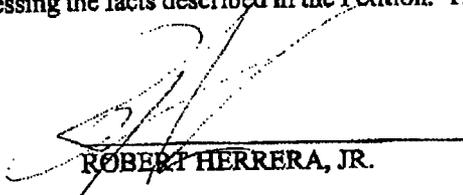
THE STATE OF TEXAS §

COUNTY OF BEXAR §

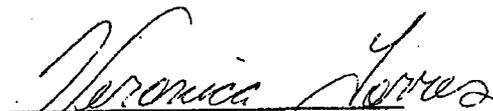
BEFORE ME, the undersigned Notary Public, on this day personally appeared ROBERT HERRERA, JR., known to me to be the person whose name is subscribed below on this verification, and being by me duly sworn on her oath states:

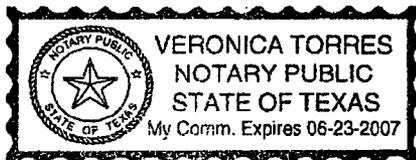
1. that he is over 21 years of age, has never been convicted of a felony and is otherwise fully competent to make this statement; and

2. that the facts asserted in the foregoing Petition for Writ of Mandamus accurately recount his communications and contact with the Frio County Sheriff's Office regarding the referenced open records requests made by him and that his personal knowledge is derived from personal participation, involvement and witnessing the facts described in the Petition. The facts in the Petition are true and correct.

  
ROBERT HERRERA, JR.

SUBSCRIBED AND SWORN to before me, by ROBERT HERRERA, JR., on this the 27<sup>th</sup> day of JUNE, 2005.

  
Notary Public in and for the  
State of Texas



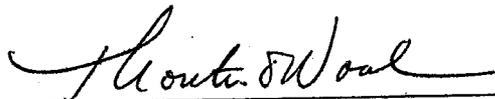
**VERIFICATION**

THE STATE OF TEXAS                   §

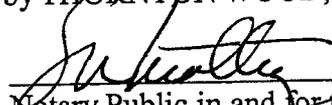
COUNTY OF TRAVIS                   §

BEFORE ME, the undersigned Notary Public, on this day personally appeared THORNTON WOOD, known to me to be the person whose name is subscribed below on this verification, and being by me duly sworn on her oath states:

1.     that he is an Assistant Attorney General, responsible for investigating complaints of noncompliance with the Public Information Act by governmental bodies, in the Open Records Division of the Office of the Attorney General of Texas (OAG);
2.     that he is over 21 years of age, has never been convicted of a felony and is otherwise fully competent to make this statement;
3.     that he is duly authorized to make this verification;
4.     that the facts asserted in the foregoing Petition for Writ of Mandamus, with regard to Robert Herrera's complaint against the Frio County Sheriff, are based on his personal knowledge and that his personal knowledge is derived from personal participation, involvement and witnessing the facts described in the Petition and/or from a review of records kept in the ordinary course of business and in connection with the official business of the OAG. The facts in the Petition are true and correct.

  
\_\_\_\_\_  
THORNTON WOOD

SUBSCRIBED AND SWORN to before me, by THORNTON WOOD, on this the 22 day of JUNE, 2005.

  
\_\_\_\_\_  
Notary Public in and for the  
State of Texas



2004-2317

Robert Herrera Jr  
8519 Chimneyhill  
San Antonio, Texas 78254  
(210) 389-9747

November 23, 2003

VIA FAX &  
CERTIFIED MAIL C.M.R.R.

Hon. Lionel Trevino  
Frio County Sheriff  
502 S. Cedar  
Pearsall, Texas 78061

RE: Texas Public Information Act (Open Records Act) and/or FOIA Request Regarding  
the Bail Bond Business in Medina County.

Pursuant to all applicable state and federal laws including Sec. 552 of the Government  
Code of the Texas Civil Statutes and the Texas Supreme Court Rules of Judicial  
Administration, if applicable, the undersigned hereby requests access for review and/or  
copies of all records, notes, electronic information and/or any other information  
maintained in any other format regarding the following:

1. Each and Every Frio County Sheriff Department employee (s) Personnel file for the period of January 1, 2002 through the date of this request. To include but is not limited to employment applications, commendations complaints and state certifications etc.
2. Each and Every Itemized Cellular telephone record and/or statement for the purpose of payment for each cellular phone that is the Property of Frio County and specifically utilized by the Frio County Sheriff Department for the period of time between January 1, 2002 through the date of this request.
3. Each and Every name and cellular telephone number of any person who has been assigned a cellular telephone by the Frio County Sheriff Department for the period of time between January 1, 2002 through the date of this request.
4. Each and Every person and/or company who is or has been authorized to execute bail bonds in Frio County for the years 2000, 2001, 2002 and 2003.
5. Each and Every document that was produced to show sufficient assets to the Frio County Sheriff, for the approval of a person and/or company to conduct a bail bond business in Frio County, Texas. To include but not limited to financial statements, D/B/A Forms, applications, etc. for the years of 2000, 2001, 2002, 2003.

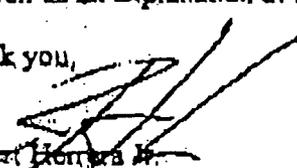
EXHIBIT  
A

6. Each and Every applications for state jailer certification by the Frio County Sheriff for employees of Correctional Services Corporation and/or Frio County Detention Center within the period of time between January 1, 2002 through the date of this request
7. Each and Every Correctional Services Corporation and/or Frio County Detention Center Employee who has terminated their employment within the period of time between January 1, 2002 through the date of this request. To include but not limited to applications, time records, Personnel file etc.
8. Each and Every Frio County Sheriff Department Employee who has terminated their employment within the period of time between January 1, 2002 through the date of this request. To include but not limited to applications, time records, Personnel file etc.
9. Any and All Audio Recording of dispatcher telephone conversations for the specific dates of September 30, 2002, October 9, 2002, August 11, 2003 and November 6, 2003 between the hours of 5:00 a.m. through 11:00 p.m.
10. Any and All Documents and/or notes that is produced by a Frio County Dispatcher to keep track and monitor radio contact with the Frio County Sheriff and Any and All Frio County Sheriff Deputies for the specific dates of September 30, 2002, October 9, 2002, August 11, 2003 and November 6, 2003 between the hours of 5:00 a.m. through 11:00 p.m.

I am requesting this information for my personal use. Please obtain approval from me before incurring any expenses in excess of \$ 40.00. If you have any pamphlets or materials, which help explain your documents or the symbols used thereon, I would appreciate a copy.

If for any reason your decision is to deny me any of the requested information, I request precise information as to why the requested information has been denied, as well as an explanation of my appeal procedure.

Thank you,

  
Robert Henderson

RECEIVED

FRIO COUNTY SHERIFFS DEPT.

DATE 04-06-05 TIME 8:00am

BY Jennifer Hernandez

ROBERT HERRERA JR.  
8519 CHIMNEYHILL  
SAN ANTONIO, TEXAS 78254  
(210) 823-2926 FAX (210) 680-6814

FACSIMILE TRANSMITTAL SHEET

TO: HON. LIONEL TREVINO

FROM:

Robert Herrera

COMPANY:

Frio County Sheriff Department

DATE:

4/5/2005

FAX NUMBER:

830-334-0053

TOTAL NO. OF PAGES INCLUDING COVER:

2

PHONE NUMBER:

SENDER'S REFERENCE NUMBER:

RE:

**Open Records Request**

YOUR REFERENCE NUMBER:

URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

NOTES/COMMENTS:

Dear Sheriff Trevino,

Please accept the attached letter as my formal request to review public information.

Should you have any questions or concerns please feel free to contact me.

Thank you

  
Robert Herrera Jr.



ROBERT HERRERA JR.  
8519 CHIMNEYHILL  
SAN ANTONIO, TEXAS 78254  
(210) 823-2926 FAX (210) 680-6814

April 5, 2005

Hon. Lionel Trevian  
And/or the Custodian of Records  
Frio County Sheriff  
502 S. Cedar  
Pearsall, Texas 78061

Via: Fax

**Re: Open Records Request For Completed Bail Bond Forms Produced By Morales Bail Bonds To The Frio County Sheriff Department For The Release Of Persons Detained in Frio County.**

Pursuant to all applicable state and federal laws including Sec.552 of the Government Code of the Texas Civil Statutes and the Texas Supreme Court Rules of Judicial Administration, if applicable, the undersigned hereby requests access for review all records, notes, electronic information and/or any other information maintained in any format by the Frio County Sheriff Department regarding the following:

1. Any and All Completed Bail Bond Forms submitted by Morales Bail Bonds for the release of inmates being held or detained in the Frio County Detention Center for a period of time beginning January 21, 2005 thru April 5, 2005.
2. Any and All Completed Bail Bond Forms submitted by Morales Bail Bonds for the release of inmates being held or detained in the Frio County Detention Center for a period of time beginning January 1, 2004 thru September 1, 2004.

(Photocopy's of original documents are acceptable with regards to the item in this specific request.)

I am requesting this information for my personal use. Please obtain approval from me before incurring any expenses in excess of \$ 40.00.

If for any reason your decision is to deny me any of the requested information, I request precise information as to why the requested information has been denied, as well as an explanation of my appeal procedure.

Thank you,  
  
Robert Herrera Jr.



# SHERIFF LIONEL TREVINO

## COUNTY OF FRIO

502 S. Cedar, Pearsall TX. 78061

Office: (830) 334 - 3311; Fax: (830) 334 - 0053



April 17, 2005

VIA US MAIL

FACSIMILE

**FAXED** By: *[Signature]*  
Date: 04-19-05

RE: YOUR REQUEST DATED APRIL 5, 2005

TO: Robert Herrera  
8519 Chimney Hill  
San Antonio, TX 78061

Dear Requestor,

This Office received your request for information. A copy of your request is attached for your convenience. In response, please be advised that:

A search of records by the officer for public information or his/her agent did not reveal any information responsive for your request.

A search of records by the officer for public information or his/her agent revealed information responsive to your request.

These records are attached for your convenience.

These records are available for inspection in this Office. Please call Sgt. John Solis @ (830) 334 - 3311 to arrange a mutually convenient time to inspect these records.

These records will be mailed to you upon receipt of payment. A separate sheet outlining the charges involved is attached for your convenience.

Inspecting or obtaining copies of the information you seek is likely to result in a charge of more than \$40.00. A separate sheet outlining the charges involved and an alternative, less costly method of viewing the records, if any, is attached for your convenience.

Information has been redacted/blacked out by the officer for public information or his/her agent. The redacted information is confidential according to state or federal law or is not subject to disclosure under this state's public information laws according to previous decisions by the Texas Attorney General.



April 19, 2005

The documents you requested contain information that the officer for public information believes should not be disclosed. This information will be forwarded to the Texas Attorney General for his ruling on whether this information is available to you under this state's public information laws. This Office will rely on the following exceptions to disclosure, which are located in Chapter 552 of the Texas Government Code:

- 552.101 (Confidential Information)
- 552.102 (Personnel Information)
- 552.103 (Litigation)
- 552.104 (Competition or Bidding)
- 552.105 (Location or Price of Property)
- 552.107 (Legal Matters)
- 552.108 (Law Enforcement and Prosecutorial Records)
- 552.108 (Private Communications of an Elected Office Holder)
- 552.110 (Trade Secrets, Certain Commercial or Financial Information)
- 552.111 (Agency Memoranda)
- 552.113 (Geological or Geophysical Information)
- 552.117 (Certain Addresses, Telephone Numbers, Soc. Sec. Numbers, Personal Family Information)
- 552.119 (Photographs of Peace Officers, Jailers, Security Guards)
- 552.127 (Certain Information Submitted by Potential Vendor or Contractor)
- 552.130 (Motor Vehicle Information)
- 552.131 (Economic Development Information)
- 552.132 (Crime Victim Information)

A memo giving further explanation regarding your request is attached.

A memo seeking further explanation regarding your request is attached.

Respectfully,



Sgt. John Solis  
INVESTIGATOR

FRIO COUNTY SHERIFF'S OFFICE

Enclosure (3)

- Copy of information request
- Memo giving further information
- Memo seeking further information
- Cost sheet
- Records

● Page 3

April 19, 2005

CC: (w/o Enclosures):



# SHERIFF LIONEL TREVINO

## COUNTY OF FRIO

502 S. Cedar, Pearsall TX. 78061

Office: (830) 334 - 3311; Fax: (830) 334 - 0053



April 17, 2005

Reference: Response to Open Records Request dated and received on April 5, 2005.

VIA FACSIMILE

Mr. Robert Herrera Jr.  
8519 Chimney Hill  
San Antonio, TX 78254

Dear Mr. Herrera,

This letter is in response to the Texas Public Information Act request of April 5, 2005. It is our understanding that you have requested access to review all records, notes, electronic information and/or any other information maintained in any other format regarding the following.

1. Any and All Completed Bail Bond Forms submitted by Morales Bail Bonds for the release of inmates being held or detained in the Frio County Detention Center for a period of time beginning January 21, 2005 Through the date of April 5, 2005.
2. Any and All Completed Bail Bond Forms submitted by Morales Bail Bonds for the release of inmates being held or detained in the Frio County Detention Center for a period of time beginning January 1, 2004 Through the date of September 1, 2004.

The bail bond copies you have requested are only an informal record, maintained in the Sheriff's Office, primarily for the purpose, of recording which bail bond company, services were retained in releasing the offender; any bail bond within the corresponding offenders record does not necessarily indicate a final record of the bail bond .

Therefore, the copies which you review may or may not have missing information pertaining to Officials signature and or notary information; etc.. Please refer to this department's response dated November 9<sup>th</sup>, 2004, for further information regarding the original Bail Bond forms and their respective Frio County offices. Should you have any questions please contact me at the above listed number.

Respectfully,

A handwritten signature in black ink, appearing to read "John Solis".

Sgt John Solis  
INVESTIGATOR  
Frio County Sheriff's Department

Enclosures (1)  
(1) cost sheet

JS  
cc: (w/o Enclosures)  
Sheriff Lionel Trevino

● Page 2

April 19, 2005

If in the event that you should request copies for all information, the following cost will incur:

**FRIO COUNTY SHERIFF'S OFFICE**

**Cost For Public Information**

Your request for public information is not likely to cost more than \$40.00. Following is an estimate of the cost to produce and provide a copy of the information you requested.

The following is an itemization of the cost to produce and/or provide a copy of the information you requested based on 44 page documentation ( this is only an estimate and will increase if the request exceeds 44 pages.

Estimated labor charge – 1.5 hours @ \$15.00 per hour = \$ 22.50

Estimated overhead charge - \$ 22.50 X % 20 = \$ 4.50

Estimated copying charge - 44 @ 0.10 per page = \$ 4.40

(standard-sized pages 8.5 x 14) (calculation is derived from multiplying the number of recorded sides by the number of records. i.e. 57 records x 2 sides)

Estimated production charge for non-standard records = \_\_\_\_\_

(only for records comprised in a form other than standard pages, such as records kept in computer records banks, microfilm, or other record-keeping systems)

Description of actual cost involved:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Estimated postal charge = records will be picked up by requestor or his agent

TOTAL CHARGE TO REQUESTOR: \$ 31.40

**Within 10 days, you must notify this Office IN WRITING whether you will accept the estimated charges or modify your request in response to the estimated charges. If you do not, your request will be considered withdrawn.**

If a less costly, alternative method of viewing the records is available to you, it is described below and you may contact this Office regarding this alternative:

- 1. None