

Cause No. 2017-50825

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|---|---|--------------------------------|
| Dolcefino Communications, LLC d/b/a | § | In the District Court |
| Dolcefino Consulting; and Wayne | § | |
| Dolcefino, in his individual capacity, | § | |
| | § | |
| <i>Petitioners,</i> | § | |
| | § | of Harris County, Texas |
| v. | § | |
| | § | |
| City of Houston, Texas, | § | |
| | § | |
| <i>Respondent.</i> | § | 11th Judicial District |

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| <p style="text-align: center;">Third Amended Petition for Writ of Mandamus Under TEX. GOV'T CODE § 552.321(a)</p> |
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In this Third Amended Petition for Writ of Mandamus under the Texas Public Information Act, TEX. GOV'T CODE § 552.321(a), **Dolcefino Communications, LLC d/b/a Dolcefino Consulting** (“Dolcefino Consulting”); and **Wayne Dolcefino**, in his individual capacity (“Dolcefino”)(collectively, Dolcefino Consulting, and Dolcefino are referred to herein as “Petitioners”) seek an order from the Court that: (a) compels Respondent, **City of Houston, Texas** (“Respondent” or “the City”) to release withheld public records to Petitioners; (b) rules upon the City’s claims that certain responsive items are exempt from disclosure under the Texas Public Information Act; (c) finds that the City has violated the TPIA in several respects; (d) enters a permanent injunction requiring the City to comply with procedural requirements of the Texas Public Information Act in the future; and (e) awards reasonable attorney’s fees as permitted by applicable law.

A.
PARTIES

1. Dolcefino Communications, LLC d/b/a Dolcefino Consulting is a Texas limited liability company in good standing which maintains its principal place of business in Harris County, Texas, and which qualifies as a “requestor” under the Texas Public Information Act.

2. Wayne Dolcefino is an individual residing in Harris County, Texas, is the sole member and manager of Defendant Dolcefino Communications, LLC d/b/a Dolcefino Consulting, and who qualifies as a “requestor” under the Texas Public Information Act.

3. Respondent City of Houston, Texas is a Texas Home Rule Municipality. The City of Houston has appeared in this matter, so no service is necessary at this time.

B.
JURISDICTION, VENUE & CONDITIONS PRECEDENT

4. The Court has original subject matter jurisdiction under TEX. GOV’T CODE § 552.321(a). Venue is proper under TEX. GOV’T CODE § 552.321(b).

5. All necessary conditions precedent to the filing of this Petition have occurred, been waived or are futile. Specifically, a requestor need not await the outcome of any request the City of Houston may have made for an opinion from the Texas Attorney General. *See Kallinen v. City of Houston*, 462 S.W.3d 25, 28 (Tex. 2015) (per curiam); *Harris County Appraisal District v. Integrity Title Co, LLC*, 483 S.W.3d 62

(Tex. App. – Houston [1st Dist.] 2015, orig. proceeding). Rather, a requestor is entitled to file a Petition for Writ of Mandamus at any time. *Id.*

C.
BACKGROUND FACTS

The City of Houston Gets A Million Dollars from EcoHub’s Ideas.

6. Petitioners represent EcoHub, LLC and Ecohub Houston, LLC (collectively “Ecohub”).

7. Ecohub has obtained multiple patents on a novel way to recycle all trash from a municipality that would eliminate 90% of the waste presently going to landfills, save the municipality money on its recycling efforts, copiously reduce greenhouse gas emissions, and in the right case, return to the municipality money (in the form of revenue sharing) from the sale of the products that EcoHub manufactured from the trash it collected from the municipality. Under the administration of Mayor Annise Parker, the City of Houston used EcoHub’s business model (known as “One Bin for All” or “One Bin”) as the basis for its application for a grant under Michael Bloomberg’s Mayors Challenge Grant Program. Out of 305 applicants, the City of Houston was one of six winners, five of whom were given \$1,000,000 to make their idea a reality.¹

Mayor Turner Thwarts EcoHub’s Chances

8. Under Mayor Parker, EcoHub participated in what is believed to be the longest RFP process in Houston history, and was chosen as the winner by a distinguished

¹ <https://www.bloomberg.org/press/releases/bloomberg-philanthropies-announces-mayors-challenge-winners-providence-chicago-houston-philadelphia-and-santa-monica/>.

panel of community leaders. Thereafter, the City and EcoHub spent years finalizing the contract that would make “One Bin for All” a reality. Despite well-documented support for EcoHub’s One Bin proposal from Mayor Turner’s top aides and advisers (and, arguably at one point, even Mayor Turner himself), Mayor Turner discontinued the City’s consideration of the One Bin proposal. Mayor Turner’s decision came in spite of: (a) the receipt of the \$1 million in grant funds the City received under the Bloomberg Mayors Challenge based on the City’s representation that it would implement One Bin; (b) the clear fiscal benefit that the citizens of the City of Houston would enjoy from the savings and job stimulus that EcoHub would bring to the City; and (c) the indisputable environmental benefits the area would enjoy for generations to come.

**Mayor Turner Recommends New Recycling Contract That Is Expected
to Cost the City Over 350% More than EcoHub’s Proposal –
and the City Council Approves It**

9. Instead of moving forward with EcoHub’s “One Bin” or “closed loop” system – which was expected to be a net *revenue generator* for the City – the City instead issued in October 2016 a new Request for Proposal for recycling services. This time, however, the new Request for Proposal was drafted in such a way that EcoHub would not qualify as a bidder, effectively destroying EcoHub’s chances under Mayor Turner’s administration. In July 2017, Mayor Turner announced that FCC, a Spanish company, had won the October 2016 Request for Proposal, and, in January 2018, the City Council approved the City’s contract with FCC.

10. To better understand exactly what happened with EcoHub's "One Bin" proposal, EcoHub engaged Dolcefino Consulting as its agent to conduct research into the City's Solid Waste Department and events surrounding the City's trash and recycling contracts in general. Starting January 6, 2017, Petitioners requested production of public records from the City pursuant to the Texas Public Information Act, hoping to learn more about why Mayor Turner preferred a costlier, and clearly less effective, recycling program as compared to the "One Bin" program. Rather than simply releasing the documents that would corroborate what Mayor Turner has time and time again claimed is a better deal for the residents of Houston, the City has instead refused to produce the requested public records, hence the need for this proceeding.

11. Petitioners' first request dated January 6, 2017 sought disclosure of communications between various city officials regarding Mayor Turner's decision to discontinue the One Bin recycling proposal which had been painstakingly negotiated for years between the City and EcoHub. [**Exhibit 1**, January 6, 2017 TPIA Request, at pp. 1-2]. The City withheld certain records on the basis of three specific exemptions: (a) the anticipation of litigation exemption found in TEX. GOV'T CODE § 552.103; (b) the attorney client privilege exemption found in TEX. GOV'T CODE § 552.104; and the (c) the unfair bidding advantage exemption under TEX. GOV'T CODE § 552.107. The City then compiled what it claimed was a "representative sample" of the "voluminous" responsive documents it believed were exempt from disclosure, and sought an opinion from Texas Attorney General Ken Paxton's office (the "AG") under TEX. GOV'T CODE §§ 552.103,

552.104 and 552.107 as to whether the City could lawfully withhold from disclosure the “representative sample” the City selected, and the documents the City claimed were just like them. [**Exhibit 2**, January 30, 2017 Request by City for Opinion from AG]. The City never offered any evidence that the January 30, 2017 TPIA Request actually resulted in a data set of “voluminous records,” though. Such offering could have included an affidavit from a City public information officer about how many records, data or pages were actually responsive to the January 30, 2017 TPIA Request, or how many hours it would take to compile or review the universe of public records that were responsive to the TPIA Request.

12. By letter dated March 30, 2017, the AG’s office rendered its opinion. [**Exhibit 3**, March 30, 2017 AG Opinion]. The AG’s office assumed, without actually determining, that the “representative sample” sent by the City was, in fact, “truly representative.” [**Exhibit 3**, at p. 2, n. 2]. Next, the AG’s office agreed with the City that the records the City cherry-picked as its “representative sample” were exempt from disclosure under TEX. GOV’T CODE § 552.104(a) due to a “competitive bidding situation.” [**Exhibit 3**, at p. 2]. Finally, the AG concluded that certain records from the “representative sample” the City marked as attorney client privilege were, in fact, exempt from disclosure under the attorney client privilege exemption found in TEX. GOV’T CODE § 552.107. [**Exhibit 3**, at p. 3]. There was no ruling on the “anticipation of litigation” exemption. [*Id.*].

13. In December 2018, the City (a) tendered additional documents to the Court for in camera review; (b) represented to the Court that it had withdrawn its reliance upon the “unfair bidding” exemption (presumably because there was no longer an open Request for Proposal from the City since FCC won the proposal) and produced all public records responsive to the January 6, 2017 TPIA request, except for the records the City withheld in reliance upon the AG Opinion and submitted with the Court *in camera*. [See Notice to Court filed Dec. 21, 2018 (Doc. No. 83109472)] However, because the AG’s TPIA opinions are not controlling upon the Court, *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010), Petitioners request the Court to inspect the records submitted *in camera* as permitted by TEX. GOV’T CODE § 552.3221 to ensure that the records the City withheld actually qualify for the claimed exemptions. After all, the bidding situation upon which the City relied to withhold records has long since passed, since FCC was awarded the City’s trash recycling contract in January 2018. And since the AG never ruled upon the “anticipation of litigation” exception, the City should not be permitted to shield public records from production using that exemption. For those public records that the Court concludes the City improperly withheld, Petitioners request the Court to order the records produced no later than ten days after the Court’s determination.

14. Since the City never offered any evidence that the January 30, 2017 TPIA request did, in fact, require production of “voluminous” information, Petitioners request the Court to rule that the representative sample procedure was unavailable to the City, and require the City to produce all public records responsive to the January 30, 2017

TPIA Request that the City did not submit to the AG for review and which it has not already produced to Petitioners.

The March 21, 2017 Request

15. Even though the TPIA requires governmental bodies to “promptly produce public information” “within a reasonable time, without delay,” TEX. GOV’T CODE § 552.221(a), the City failed to timely respond to additional TPIA requests. For instance, on March 21, 2017, Petitioners requested under the TPIA the production of, among other things, “copies of any contracts with Adroit Project Advisors LLC or Keith Edgar.” [Exhibit 4, March 21, 2017 TPIA Request to the City]. The City again sought an AG Opinion, and the AG’s office ruled against the City in a June 28, 2017 opinion. [Exhibit 5, June 28, 2017 AG Opinion]. Via letter dated July 5, 2017, the City’s Legal Department requested the Mayor’s office to release the information, but certain responsive items were not produced until weeks later, highlighting the City’s dereliction of duty.

16. Petitioners request the Court to find that the City failed to comply with the TPIA’s requirement that responsive public records be produced “within a reasonable time, without delay,” and use that finding as a basis for permanent injunctive relief and an award of attorney’s fees.

The June 21, 2017 Request

17. On June 21, 2017, Petitioners sought additional public records from the City. [Exhibit 6, June 21, 2017 TPIA Request]. Specifically, Petitioners sought the following materials:

1. Documents detailing all e-mail communications between Sylvester Turner and any representative of Waste Management and Republic Services between January 1, 2015 and October 14, 2016.
2. Documents detailing all e-mail communications between any member of the Mayor's staff and any representative of Waste Management and Republic Services between January 1, 2015 and October 14, 2016.
3. Documents detailing the names of members of the evaluation committee on any recycling contracts for the City of Houston between January 1, 2015 and October 14, 2016, along with all evaluations provided by said members.
4. E-mails sent or received by all members of any evaluation committee for Republic or Waste Management between January 1, 2015 and October 14, 2016 relating to garbage collection, processing, or recycling.
5. All e-mails sent or received by Harry Hayes relating to Republic or Waste Management between January 1, 2015 and October 14, 2016, including but not limited to e-mails sent by Sylvester Turner, Andy Icken and any employee or lobbyist working for Waste Management or Republic.
6. Documents detailing any contract between the City of Houston and Waste Management in which no outside bids were received between January 1, 2014 and October 14, 2016.
7. All e-mails sent or received by Steve Francis between January 1, 2014 and October 14, 2016.

[Exhibit 6, at pp. 1-2]. On July 19, 2017, the City responded, but produced a paltry 20 pages – 8 pages of the same email thread, and 11 pages of press releases which were long ago made public. As for the rest of the requests, the City withheld responsive items and instead sought yet another AG Opinion through a letter dated July 13, 2017. Once again, the City gathered its allegedly “representative sample” of documents and sent those to the AG, claiming that the representative sample, and the “voluminous” documents the City claimed the sample represented, were exempt from disclosure under: (a) the attorney

client privilege found in TEX. GOV'T CODE § 552.104; (b) the unfair bidding advantage exemption under TEX. GOV'T CODE § 552.107; and (c) the interagency or intra-agency memorandum or letter exception found in TEX. GOV'T CODE § 552.111. [Exhibit 7, July 13, 2017 Request by City for Opinion from AG]. Like the January 30, 2017 TPIA Request, the City never offered any evidence that the June 21, 2017 TPIA Request actually sought “voluminous records,” such as offering an affidavit from a City public information officer about how many records, data or pages were actually responsive to the June 21, 2017 TPIA request, or how many hours it would take to compile or review the universe of responsive information. This seems like a reasonable procedure, especially since it is nearly identical to the procedures that Texas law requires a litigant to follow when arguing that to respond to an overbroad civil discovery requests would be “unduly burdensome” as that term is used in TEX. R. CIV. P. 192.4. *See In re Alford Chevrolet–Geo*, 997 S.W.2d 173, 181 (Tex. 1999) (orig. proceeding) (holding that party resisting discovery cannot make conclusory² allegations that requested discovery is unduly burdensome but must instead must produce some evidence supporting its claim of undue burden); *In re Master Flo Valve Inc.*, 485 S.W.3d 207, 217 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (same). Petitioners believe that this failure precluded the City from relying on the “representative sample” procedure.

² A “conclusory” statement is one which expresses a factual inference without stating the underlying facts on which the inference is based. *See Arkoma Basin Exploration Co. v. FMF Assocs. 1990–A, Ltd.*, 249 S.W.3d 380, 389 n. 32 (Tex. 2008) (citing BLACK’S LAW DICTIONARY 308 (8th ed. 2004)).

18. The AG rendered its opinion via letter dated September 12, 2017, ruling that (a) the City could withhold certain information on alleged competitive bidding issues (even though there was no competitive bidding situation between February 2015, when EcoHub won the first bid, and October 2016 when the City cancelled EcoHub's awarded Requests for Proposal and sent out a new Request for Proposal written to exclude EcoHub from qualifying); and (b) overruling some of the City's claimed attorney-client privilege exemptions. [**Exhibit 8**, September 12, 2017 AG Opinion].

19. In December 2018, the City (a) tendered additional documents to the Court for *in camera* review; (b) represented to the Court that it had withdrawn its reliance upon the "unfair bidding" exemption (presumably because there was no longer an open Request for Proposal from the City since FCC won the proposal) and produced all public records responsive to the June 21, 2017 TPIA request except for the records the City withheld in reliance upon the AG Opinion and submitted with the Court *in camera*. [*See* Notice to Court filed Dec. 21, 2018 (Doc. No. 83109951)] However, because the AG's TPIA opinions are not controlling upon the Court, Petitioners request the Court to inspect the records submitted *in camera* as permitted by TEX. GOV'T CODE § 552.3221 to ensure that the records Petitioners withheld actually qualify for the claimed exemptions. For those public records that the Court concludes the City improperly withheld, Petitioners request the Court to order the records produced to Petitioners no later than ten days after the Court's determination.

20. Since the City never offered any evidence that the June 21, 2017 TPIA request did, in fact, require production of “voluminous” information, Petitioners request the Court to rule that the representative sample procedure was unavailable to the City, and require the City to produce all public records responsive to the June 21, 2017 TPIA Request that the City did not submit to the AG for review and which it has not already produced to Petitioners.

The July 19, 2017 TPIA Request

21. On July 19, 2017, Petitioners sought additional public records from the City. [**Exhibit 9**, July 19, 2017 Email to Darian Ward]. Specifically, Petitioners sought public records supporting Mayor Turner’s choice of FCC for the recycling contract with the City of Houston. [*Id.*]. On July 27, 2017, the City responded and, once again, refused to release any information, instead relying upon the AG’s prior ruling that certain documents were exempt from disclosure under TEX. GOV’T CODE §552.104. [**Exhibit 10**, July 27, 2017 Letter from the City to Dolcefino].

22. Petitioners believe the AG’s ruling to have been legally incorrect or, at a minimum, incomplete (since it relied upon an allegedly representative sample of documents the City cherry-picked). Certainly, there was no competitive bidding situation upon which the City could rely to withhold the responsive records, since Ecohub’s proposed bid had been cancelled in February 2016 (according to Harry Hayes), and the

Mayor had already selected FCC as the winning bidder in June 2017,³ roughly a month before the TPIA request was even issued.

23. On December 5, 2017, the City tendered to the Court for *in camera* inspection 2,442 pages of public records responsive to the July 19, 2017 TPIA Request. [See City's Tender of Documents filed Dec. 5, 2017 (Doc. No. 77686387)]. Thus, Petitioners request the Court to conduct an *in camera* inspection of these documents under TEX. GOV'T CODE § 552.3221 and determine if the withheld public records actually qualify for the claimed exemptions, and order the City to produce any public records responsive to Petitioners' July 19, 2017 TPIA Request that the Court finds were improperly withheld by the City.

The July 25, 2017 TPIA Request

24. On July 25, 2017, Petitioners sought additional public records from the City. [**Exhibit 11**, July 25, 2017 TPIA Request and proof of receipt by City]. The City never even acknowledged receipt of the July 25, 2017 request, nor did it timely seek an AG Opinion in the period required by TEX. GOV'T CODE § 552.301(b). Accordingly, the public records responsive to the July 25, 2017 request were presumed to be required to be publicly disclosed, unless the City could provide a "compelling reason" to withhold the information, which it has never sought to do. TEX. GOV'T CODE § 552.302.

25. The City did not respond to the July 25, 2017 Request until, by its own admission, at least November 26, 2017 (114 days after the 10-day response period

³ <https://www.houstonchronicle.com/news/politics/houston/article/Council-members-question-recycling-contract-11254553.php>.

expired). On December 14, 2018, the City claimed in writing that it has produced to Petitioners all public information responsive to the July 25, 2017 TPIA Request. [December 14, 2018 Notice to Court (Doc. No. 83111204)]. Even assuming that to be a true statement, the City took at least 114 days to produce the responsive public records, and did not follow the statutory procedures for seeking time beyond the 10-day response period in the TPIA. TEX. GOV'T CODE § 552.221(c), (d). The only excuse the City has offered for its 114-day delay in responding was its unsupported claim that the City “overlooked” or “misplaced” the July 25, 2017 TPIA request. [See City’s Response to Motion to Compel, at pp. 1-2 (filed Dec. 1, 2017 as Doc. No. 77640336)]. There is no provision in the TPIA that allows the City to overlook TPIA requests, and the 114-day delay in producing responsive public information is certainly not a timely production as required by Section 552.221(a). Accordingly, Petitioners request the Court to find that the City’s 114-day delay in responding to the July 25, 2017 TPIA Request was a violation of Section 552.221(a), and use that finding as a basis for entering a permanent injunction against the City, as well as an award of attorney’s fees against the City.

The August 10, 2017 TPIA Request

26. On August 10, 2017, Petitioners sought additional public records from the City. [**Exhibit 12**, August 10, 2017 TPIA Request]. On August 24, 2017, the City sought, in two separate letters, another AG Ruling, and once again, refused to release any information. [**Exhibit 13**, August 24, 2017 Request by City for AG Ruling for GC No. 24562; **Exhibit 14**, August 24, 2017 Request by the City for AG Ruling for GC No.

24563]. Petitioners do not know what became of those two AG requests for ruling, but Petitioner believes the City has withheld public records that are responsive to the August 10, 2017 TPIA request, and that the City's claimed exemptions do not apply. The pending litigation exception did not apply because there was no pending litigation between Petitioners and the City during January 1 to December 31, 2015 — the time periods referenced in part of the TPIA Request.

27. Thus, Petitioners request the Court to conduct an *in camera* inspection under TEX. GOV'T CODE § 552.3221 to ensure that the public records that are responsive to the August 10, 2017 TPIA request actually qualify for the claimed exemptions, and to order the City to produce any public records responsive to the August 10, 2017 TPIA request that the Court finds were improperly withheld.

The December 21, 2017 TPIA Request

28. On December 21, 2017, Petitioners sought additional public records from the City, as follows:

From: Wayne Dolcefino [<mailto:wayne@dolcefino.com>]
Sent: Thursday, December 21, 2017 9:30 AM
To: Bernstein, Alan - MYR <Alan.Bernstein@houstontx.gov>
Subject:

Merry Xmas. Can you give me names of evaluators and their sheets for FCC deal. Today.
Sent from my iPhone

[**Exhibit 15**, December 21, 2017 TPIA Request]. The City responded, and initially said this:

From: Bernstein, Alan - MYR [mailto:Alan.Bernstein@houstontx.gov]
Sent: Thursday, December 21, 2017 10:08 AM
To: Wayne Dolcefino <wayne@dolcefino.com>
Cc: Makany-Rivera, Tanya - MYR <Tanya.Makany-Rivera@houstontx.gov>
Subject: RE:

Wayne,

Thank you for this request under the TPIA. We will respond when we determine if, among other things, the information can be disclosed at this point in the procurement process.

Alan Bernstein
Director of Communications
Office of Houston Mayor Sylvester Turner

[**Exhibit 15**, City’s December 21, 2017 Email Response]. Thereafter, the City sought an AG opinion and relied upon the “competitive bidding” exemption contained in Section 552.104 of the Government Code. [**Exhibit 16**, Jan. 8, 2018 Letter from City seeking AG Opinion]. On January 30, 2018, the AG sided with the City. [**Exhibit 17**, AG Opinion]. The AG’s Opinion is not legally correct, since there was no Request for Proposal pending at the time for which there were “competitive bidders”, and Section 52.002(4) and (5) specifically makes public “the name of each official and the final record of voting on all proceedings in a governmental body” and “all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate”.

29. Given the City’s failure to produce information responsive to the December 21, 2017 TPIA Request, and the inapplicability of the exemption upon which the City has relied to shield such public records, Petitioners request the Court to conduct an *in camera* inspection under TEX. GOV’T CODE § 552.3221 to ensure that the public records that are

responsive to the December 21, 2017 TPIA request actually qualify for the claimed exemption, and to order the City to produce any public records responsive to the December 21, 2017 TPIA Request that the Court finds were improperly withheld.

The February 12, 2019 Request

30. On February 2, 2019, Petitioners sought additional public records from the City. [**Exhibit 18**, February 12, 2019 TPIA Request and proof of receipt by City]. Specifically, Petitioners sent an email and a certified letter to the City, and sought the following:

1. Any e-mails sent or received by any of the following people regarding EcoHub, One Bin, or FCC since January 1, 2016 which have not been previously publicly released under the Texas Public Information Act:
 - a. Harry Hayes
 - b. Sylvester Turner
 - c. Andy Icken
 - d. Steve Francis
 - e. Keith Edgar
 - f. Carolyn Hanahan
 - g. Jerry Adams
 - h. John Gillespie
 - i. Allison Brock
 - j. Maya Ford
2. Any emails not previously released under the Texas Public Information Act sent or received between Harry Hayes and any employee, lobbyist or agent of Republic Waste or Waste Management since January 1, 2016.
3. The names of the members of the evaluation committee who graded the FCC contract.
4. Any emails sent or received by the members of the FCC contract evaluation committee since January 1, 2016 which relate to the FCC contract.
5. A copy of the last bids received by the city of Houston for all landfill services from any company currently operating landfill services for residential trash.
6. A document detailing total payments to any company utilized by the city of Houston for landfill storage or disposal since January 1, 2016.

As you know, you are mandated to respond and/or produce documents by the tenth business day per Section 552.221(a) of the Texas Public Information Act. If you have any questions or need additional information, please contact me at 713-360-6911.

The City received the February 12, 2019 Request on February 20, 2019 but, for reasons which remain unknown, the City has never (a) acknowledged receipt of the February 12,

2019 TPIA Request; or (b) timely sought an AG Opinion in the period required by TEX. GOV'T CODE § 552.301(b). Accordingly, the public records that are responsive to the February 12, 2019 TPIA Request are presumed to be required to be publicly disclosed, unless the City can provide a “compelling reason” to withhold the information. TEX. GOV'T CODE § 552.302. Because the City has not shown, nor will it be able to show, a compelling reason to justify withholding disclosure, Petitioners request the Court to: (a) issue an order compelling production of all public records responsive to the February 12, 2019 TPIA Request within 10 days of the date of such order; and (b) find that the City’s 31-day delay in responding to the February 12, 2019 TPIA Request is a violation of TEX. GOV'T CODE § 552.221(a), and use that finding as a basis for entering a permanent injunction against the City, as well as an award of attorney’s fees against the City.

The City’s Continued Failure to Comply with the TPIA

31. Petitioners have continued to follow up with the City’s TPIA staff regarding the production of responsive public records and over the last few months, the City has released various documents. The City continues to violate the TPIA as shown above, given that the City will not: (a) produce documents within a reasonable time; (b) confirm in writing if the requested information is unavailable at the time of the request to examine because it is in active use or in storage and, in that event, set a date and hour within a reasonable time when the information will be available for inspection or duplication; (c) as shown by the City’s decision to ignore the February 12, 2019 TPIA Request, respond to pending TPIA Requests. This steadfast refusal to provide such

information violates (a) TEX. GOV'T CODE § 552.221(a) (requiring governmental entities to “promptly produce public information” “within a reasonable time, without delay,”); (b) TEX. GOV'T CODE § 552.221(c) (stating that “[i]f the requested information is unavailable at the time of the request to examine because it is in active use or in storage, the officer for public information shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.”); and (c) TEX. GOV'T CODE § 552.221(d) (stating that where “an officer for public information cannot produce public information for inspection or duplication within 10 business days after the date the information is requested ..., the officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.”). Because the City has violated, and continues to violate, these provisions, Petitioners requests the Court issue a permanent injunction that requires the City to comply with TEX. GOV'T CODE § 552.221(a), TEX. GOV'T CODE § 552.221(c) and TEX. GOV'T CODE § 552.221(d) when responding to all pending and future TPIA requests from Petitioners.

D.
RELIEF REQUESTED

COUNT 1
Writ of Mandamus

32. Petitioners repeat and re-allege each and every allegation made in the previous paragraphs as if fully rewritten herein.

33. Because “the fundamental philosophy of the American constitutional form of representative government . . . [is] that government is the servant and not the master of the people,” the Texas Legislature has decreed that “it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees.” TEX. GOV’T CODE § 552.001(a). Although the people governed by a democracy have delegated to the government the authority to govern, that power must not be wielded in secrecy. As the Legislature has recognized, our public servants do not have “the right to decide what is good for the people to know and what is not good for them to know.” TEX. GOV’T CODE § 552.001(a). To ensure that the people of Texas “may retain control over the instruments they have created,” the Legislature passed the Texas Public Information Act, which requires the Court to liberally construe those protections in favor of granting the public’s request for disclosure of public information.

34. To that end, Petitioners request the Court to: (a) order the City to produce all public records responsive to the February 12, 2019 TPIA Request; and (b) conduct an *in camera* inspection under TEX. GOV’T CODE § 552.3221 to ensure that all public records responsive to the TPIA Requests listed above (but withheld) do, in fact, qualify for the exemptions the City has invoked and, for those that do not, order the City to produce any public information the Court finds was improperly withheld within 10 days after the Court’s decision; (c) find that the City has violated the TPIA by both withholding records from production that it did not actually produce to the AG for review

and by failing to timely produce public information responsive to the July 25, 2017 and February 12, 2019 TPIA Requests.

COUNT 2
Permanent Injunction

35. Petitioners repeat and re-allege each and every allegation made in the previous paragraphs as if fully rewritten herein.

36. Because the City has violated, and continues to violate, the above-described provisions of the TPIA, Petitioners requests that, after the trial of this case, the Court issue a permanent injunction that requires the City to comply with TEX. GOV'T CODE § 552.221(a), TEX. GOV'T CODE § 552.221(c) and TEX. GOV'T CODE § 552.221(d) when responding to all pending and future TPIA requests from Petitioners.

COUNT 3
Attorney's Fees and Costs

37. Petitioners repeat and re-allege each and every allegation made in the previous paragraphs as if fully rewritten herein.

38. Partially, or perhaps solely, as a result of the instant mandamus proceeding, the City of Houston has now revoked its prior refusal to produce public records, but it continues to refuse to produce additional public records that it has tendered to the Court for *in camera* review, and otherwise violate the TPIA. Because this Petition for Writ of Mandamus has led to some records being produced (albeit some more than a year after they were requested), and because the City continues to violate the TPIA, Petitioners are

entitled to and request from the Court an award of reasonable attorney's fees and costs, as permitted by TEX. GOV'T CODE § 552.323.

E.
PRAYER

Petitioners request the Court to: (a) order the City of Houston to produce, no later than 10 days after the Court's order, all records responsive to the February 12, 2019 TPIA Request; (b) conduct an *in camera* inspection under TEX. GOV'T CODE § 552.3221 and determine whether the responsive public records the City has withheld are, in fact, exempt from production; (c) determine that the City's failure to offer evidence that the TPIA requests actually sought voluminous records precluded its reliance upon that procedure to seek an AG Opinion, and order the City to produce, within 10 days after the Court's order, any responsive public records that were not actually submitted to the AG for ruling; and (d) order the City to produce, within 10 days after the Court's order, any public records the Court finds that the City either improperly withheld or has refused or failed to produce. Petitioners also request a permanent injunction, as set forth above, and an award of reasonable attorney's fees and costs, as well as all other relief the Court believes Petitioners should have.

DATE: April 4, 2019

Respectfully submitted,

HICKS THOMAS LLP
A REGISTERED LIMITED LIABILITY PARTNERSHIP

By:  _____

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**Attorneys for Petitioners Dolcefino
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his individual capacity**

Certificate of Service

I hereby certify that, on April 4, 2019, a true and correct copy of the foregoing has been served to all counsel of record, at the address listed below using the method(s) listed below, as follows:

Ronald Lewis, City Attorney
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Via E-Service and/or Email

 _____
Stewart Hoffer