

2021-51194 / Court: 133

CAUSE NO. _____

DOLCEFINO COMMUNICATIONS,
LLC D/B/A DOLCEFINO
CONSULTING,

Plaintiff,

vs.

CITY OF GALENA PARK,
ESMERELDA MOYA, ROBERT
COLLINS, AND MAYRA GONZALES

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

___ JUDICIAL DISTRICT

Plaintiff's Original Petition

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, DOLCEFINO COMMUNICATIONS, LLC d/b/a DOLCEFINO CONSULTING (“Plaintiff” or “Dolcefino Consulting”), files this Original Petition complaining of the CITY OF GALENA PARK (“Defendant” or “Galena Park”), ESMERELDA MOYA, ROBERT COLLINS, and MAYRA GONZALEZ, and respectfully shows the following:

I. DISCOVERY CONTROL PLAN

1. Pursuant to TEX. R. CIV. P. 190.4, Plaintiff requests that discovery be conducted under a Level 3 discovery control plan.

II. PARTIES

2. Plaintiff, Dolcefino Communications, LLC d/b/a Dolcefino Consulting, is a Texas limited liability company.

3. Defendant, City of Galena Park, is a municipality in Harris County, Texas. Defendant may be served through its registered agent for service, Esmerelda Moya, Mayor, at

2000 Clinton Drive, Galena Park, Texas 77547, or wherever she may be found.

4. Defendant, Esmerelda Moya, is the Mayor of the City of Galena Park. Defendant may be served with process at 2000 Clinton Drive, Galena Park, Texas 77547, or wherever she may be found.

5. Defendant, Robert Collins, is the City Attorney for the City of Galena Park. Defendant may be served with process at 2000 Clinton Drive, Galena Park, Texas 77547, or wherever he may be found.

6. Defendant, Mayra Gonzalez, is the City Secretary for the City of Galena Park. Defendant may be served with process at 2000 Clinton Drive, Galena Park, Texas 77547, or wherever she may be found.

III. JURISDICTION

7. The amount in controversy exceeds the Court's minimum jurisdictional requirements. The Court has personal jurisdiction over Defendant because Defendant is a Texas resident, and no diversity of citizenship exists.

8. Plaintiff seeks to recover monetary relief of \$100,000 or less and non-monetary relief.

9. Plaintiff expressly disavows that any claims are being made pursuant to federal law.

IV. VENUE

10. Venue for this action is proper in Harris County because all or a substantial part of the transactions or occurrences made the basis of this lawsuit occurred in Harris County, Texas. TEX. CIV. PRAC. & REM. CODE § 15.002.

V. NOTICE

11. Plaintiff will show that in accordance with Texas Rules of Civil Procedure and all

applicable Texas statutes, any notice required by law was given.

VI. FACTUAL BACKGROUND

12. On March 17, 2021, Dolcefino Consulting submitted a request (the “First Request”) under the Texas Public Information Act (the “Act”), seeking the production of documents including (a) financial records relating to federal grants received by Galena Park for any natural disasters since January 1, 2017, including Hurricane Harvey; (b) minutes from Galena Park City Council meetings since January 1, 2017; (c) accounts payable for Galena Park since January 1, 2019; (d) expenditures for certain budget accounts since January 1, 2018; (e) information relating to Galena Park water customers; and (f) information relating to Galena Park’s employees. The First Request was received by the City Attorney for Galena Park, Robert Collins, as well as the City Secretary for Galena Park, Mayra Gonzalez. In response to the First Request, following several follow up letters and emails between Dolcefino Consulting and representatives of the city, Galena Park claimed there are no documents that are responsive to (a), wrongly claimed that documents responsive to (b) are available online before later making them available online after a month of back-and-forth between Dolcefino Consulting and representatives of Galena Park, produced only two pages of documents in response to (c), failed to produce any documents in response to (d), and wrongly claimed that Galena Park does not have to produce documents in response to (e).

13. On March 19, 2021, Dolcefino Consulting submitted a request (the “Second Request”) under the Act seeking the production of documents including (a) invoices submitted by the City Attorney since January 1, 2017; (b) past due invoices received from Galena Park’s vendors since January 1, 2020; (c) internal audits or financial reports prepared for the Galena Park City Council since January 1, 2017; (d) information relating to employees of Galena Park, including

the names, job titles, and annual salaries of city employees and information relating to city employees who resigned or were fired since January 1, 2017; (e) invoices paid to Moya and Primo's Auto Service by Galena Park since January 1, 2017; and (f) information concerning water bills issued by Galena Park since January 1, 2017. The Second Request was received by the City Attorney for Galena Park, Robert Collins, as well as the City Secretary for Galena Park, Mayra Gonzalez. In response to the Second Request, following several follow up letters and emails between Dolcefino Consulting and representatives of the city, Galena Park has failed to produce fully documents responsive to (a), despite being ordered to do so by the Texas Attorney General, has not produced any documents in response to (b) and (d), has only produced one document in response to (c), and has wrongly claimed that Galena Park does not have to produce documents in response to (f).

14. On April 1, 2021, Dolcefino Consulting submitted a request (the "Third Request") under the Act seeking the production of documents including (a) itemized expenditures from any grant received by Galena Park since January 1, 2017; (b) the titles of Galena Park employees identified in an attachment to the request; (c) the general ledger for Galena Park detailing expenditures since January 1, 2019; (d) video and audio recordings from Galena Park City Council meetings since January 1, 2020; (e) invoices received from the City of Houston for the use of water by Galena Park residents; and (f) the publicly releasable portions of the personnel file for Jorge Flores, an employee of Galena Park. The Third Request was received by the City Secretary for Galena Park, Mayra Gonzalez. In response to the Third Request, following several follow up letters and emails between Dolcefino Consulting and representatives of the city, Galena Park asserted that there are no documents responsive to (a), failed to provide a cost estimate and/or any documents in response to (c), and have only produced nine pages of documents in response to (f).

15. On April 12, 2021, Dolcefino Consulting submitted a request (the “Fourth Request”) under the Act seeking the production of documents including (a) a copy of all bids for the pool contract; and (b) documents reflecting pool employee attendance. The First Request, Second Request, Third Request, and Fourth Requests are collectively referred to as the “Requests.” The Fourth Request was received by the City Secretary for Galena Park, Mayra Gonzalez. In response to the Fourth Request, following several follow up letters and emails between Dolcefino Consulting and representatives of the city, Galena Park stated their intent to seek protection from the Texas Attorney General but has not provided Dolcefino Consulting with notice of the same as required under Chapter 552 of the Texas Government Code.

16. Generally, in response to the Requests, Galena Park failed to produce the records required under the Act in violation of Chapter 552 of the Texas Government Code. Accordingly, Dolcefino Consulting filed a criminal complaint against Galena Park and three of its employees, Mayor Esmerelda Moya, Secretary Mayra Gonzales, and City Attorney Robert Collins, based on their failure or refusal to provide access to public information.

17. The City Council of Galena Park met on July 6, 2021. The meeting agenda posted on Galena Park’s website stated that if a member of the public would like to register to comment on an agenda item, the member of the public must register by email with the City Secretary by 4:30 P.M. on Tuesday, July 6, 2021. At 1:33 P.M. on July 6, 2021, the President of Dolcefino Consulting, Wayne Dolcefino, sent an email to the City Secretary, Defendant Mayra Gonzales, advising that he wanted to speak in the public comment section of that evening’s City Council meeting.

18. The meeting was conducted via Zoom telephone conference, purportedly to advance the public health goal of limited face-to-face meetings to slow the spread of COVID-19.

All members of the public who “attend” these meetings are muted during the meeting. When it came time for the public comment portion of the meeting to occur, however, Mr. Dolcefino’s name was called but the host of the Zoom telephone conference refused to unmute Mr. Dolcefino so he could speak. The failure to allow Mr. Dolcefino to speak or otherwise participate at the City Council meeting, despite his compliance with the requirements to do so, constitutes a violation of the Texas Open Meetings Act.

19. In addition, the City Council of Galena Park met on again on August 3, 2021. The meeting agenda posted on Galena Park’s website stated that if a member of the public would like to register to comment on an agenda item, the member of the public must register by email with the City Secretary by 4:30 P.M. on Tuesday, August 3, 2021. At 8:29 A.M. on August 2, 2021, the President of Dolcefino Consulting, Wayne Dolcefino, sent an email to the City Secretary, Defendant Mayra Gonzales, advising that he wanted to speak in the public comment section of the August 3, 2021 City Council meeting.

20. The meeting was conducted via Zoom telephone conference, purportedly to advance the public health goal of limited face-to-face meetings to slow the spread of the COVID-19. All members of the public who “attend” these meetings are muted during the meeting. When it came time for the public comment portion of the meeting to occur, however, Mr. Dolcefino’s name was called but the host of the Zoom telephone conference refused to unmute Mr. Dolcefino so he could speak. The failure to allow Mr. Dolcefino to speak or otherwise participate at the City Council meeting, despite his compliance with the requirements to do so, constitutes an additional violation of the Texas Open Meetings Act.

VII. CAUSES OF ACTION

A. DECLARATORY JUDGMENT

21. The preceding paragraphs are incorporated for all purposes.

22. Plaintiff seeks declaratory relief under Chapter 37 of the Texas Civil Practice and Remedies Code (the “Texas Uniform Declaratory Judgment Act”). Section 37.004 of the Texas Uniform Declaratory Judgment Act provides that “[a] person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question or construction or validity under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder.” TEX. CIV. PRAC. & REM. CODE § 37.004(a).

23. There is a justiciable dispute between Dolcefino Consulting and Galena Park considering the rights of the parties. Accordingly, Dolcefino Consulting seeks judicial declarations that: (1) Plaintiff’s request for accounts payable for the City of Galena Park since January 1, 2017 is proper under the Texas Public Information Act; (2) Plaintiff’s request for information relating to certain expenditures since January 1, 2018, including general funds, street and drainage, grounds maintenance, and Mayor/City Council is proper under the Texas Public Information Act; (3) Plaintiff’s request for information about Galena Park’s water customers, including the addresses of customers and any past due water payments since January 1, 2019 is proper under the Texas Public Information Act; (4) Plaintiff’s request for invoices submitted by the City Attorney for Galena Park, Robert Collins, since January 1, 2017 is proper under the Texas Public Information Act; (5) Plaintiff’s request for information relating to all past due invoices received from any vendor of Galena Park since January 1, 2020 is proper under the Texas Public Information Act; (6) Plaintiff’s request for information relating to the pool contract and pool employee attendance are proper under the Texas Public Information Act; (7) Galena Park must provide documents responsive to the above-listed requests and other information under the Texas

Public Information Act, including cost and time of completion estimates, when applicable.

24. More specifically, with respect to the individual requests, Dolcefino Consulting seeks judicial declarations that: (1) Plaintiff's requests for information relating to Galena Park's water customers and information concerning water bills issued by Galena Park since January 1, 2017 are not exempt from production under Texas Utility Code § 182.052 because they are public records; (2) expenditures made from the Hurricane Harvey 2017 Community Development Block Grant that Galena Park received in the amount of \$6,605,672 must be produced pursuant to the requests in item (a) of the First Request and item (a) in the Third Request; (3) Galena Park must produce a document detailing all accounts payable for the City of Galena Park since January 1, 2019, not just the accounts with balances as of the date of item (c) in the First Request; (4) Galena Park must produce information relating to its employees in response to item (d) in the First Request; (5) Galena Park must produce the invoices of the City Attorney since January 1, 2017, in response to item (a) of the Second Request; (6) Galena Park must produce all past due invoices from any vendor since the date of the Second Request in response to item (b) of the Second Request; (7) Galena Park must produce all records responsive to item (c) of the Second Request; (8) Galena Park must produce a document detailing the names, job titles, and annual salary of all Galena Park employees and a list of those who have been fired or who resigned in response to item (d) of the Second Request; (9) Galena Park must produce the general ledgers detailing all of the expenditures of Galena Park since January 1, 2019 in response to item (c) of the Third Request, including information regarding the invoice date, date paid, and memo line; (10) Galena Park must produce the documents that the Texas Attorney General's Office ordered produced with respect to item (f) of the Third Request.

25. Based on Galena Park's response to the Requests as well as the actions and

inactions described in this Petition, Dolcefino Consulting seeks judicial declarations that: (1) Galena Park has violated the provisions of the Texas Public Information Act by failing to comply with its statutory obligations and such non-compliance has violated Plaintiff's rights under the same; (2) Galena Park has failed to timely and properly request the withholding of responsive records and must produce all of the documents responsive to the Fourth Request; (3) Galena Park cannot charge more than \$40 per request for responsive records as they have failed to produce a timely cost estimate on any of the Requests; (4) Galena Park's failure to produce the records required under the Texas Public Information Act violate Chapter 552 of the Texas Government Code; (5) Dolcefino Consulting, as a member of the news media, has the right to comment and/or participate in public meetings conducted by the City Council of Galena Park under the provisions of the Texas Open Meetings Act; and (6) Galena Park's failure to allow the President of Dolcefino Consulting, Wayne Dolcefino, to comment and/or participate during the City Council meeting on July 6, 2021, constitutes a violation of the Texas Open Meetings Act.

26. Plaintiff seeks an equitable and just award of reasonable and necessary attorney fees under TEX. CIV. PRAC. & REM. CODE § 37.009.

B. VIOLATIONS OF THE TEXAS PUBLIC INFORMATION ACT

27. The preceding paragraphs are incorporated for all purposes.

28. Pleading further and in the alternative, if necessary, Galena Park has committed numerous violations of the Texas Public Information Act by failing to provide access to documents and information in response to the Requests.

29. Section 552.221 of the Texas Government Code requires that "an officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer." "Promptly" means "as soon as possible under the circumstances, that is, within a reasonable time, without delay."

30. Section 552.301 of the Texas Government Code provides that, if a governmental body is to withhold public information, the governmental body must, within ten days, (1) request an Attorney General opinion and state which exceptions apply; (2) notify the requesting party of the referral to the Attorney General; and (3) notify third parties if the request involves their proprietary information. Failure to follow this procedure results in the presumption that the information is open unless there is a compelling reason to withhold it.

31. Dolcefino Consulting submitted the Requests to Galena Park but, as of the date of this Petition, Galena Park has failed to promptly produce or make available the requested information.

32. Dolcefino Consulting asserts that the information it is seeking should be presumed as “open” and Galena Park should be required to make that information available.

33. Texas Government Code § 552.321 provides that a requestor may file suit for a writ of mandamus compelling a governmental body to make information available for public inspection if the governmental body refuses to request a decision from the Texas Attorney General or refuses to supply public information or information that the Texas Attorney General has determined is public information that is not excepted from disclosure. Plaintiff requests that a writ of mandamus be issued under authority of Texas Government Code § 552.231 that compels Galena Park to make the requested information available for public inspection. Specifically, Plaintiff requests that a writ of mandamus be issued to Defendants Esmerelda Moya, Robert Collins, and Mayra Gonzalez compelling them to make the requested information available for inspection by Plaintiff.

C. VIOLATIONS OF THE TEXAS OPEN MEETINGS ACT

34. The preceding paragraphs are incorporated for all purposes.

35. The President of Dolcefino Consulting, Wayne Dolcefino, properly registered comment and/or participate in the City Council meeting held by the City Council of Galena Park

on July 6, 2021, in accordance with the requirements posted on the website for the City of Galena Park. Mr. Dolcefino joined the Zoom meeting and waited for his opportunity to speak, but when it came time for the public comment portion of the meeting to occur, Mr. Dolcefino's name was called but the host of the conference refused to unmute Mr. Dolcefino so he could speak.

36. Section 551.142 of the Texas Government code provides:

- (a) An interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body.
- (b) The court may assess costs of litigation and reasonable attorney fees incurred by a plaintiff or defendant who substantially prevails in an action under Subsection (a). In exercising its discretion, the court shall consider whether the action was brought in good faith and whether the conduct of the governmental body had a reasonable basis in law.

37. The City Council of Galena Park is a governmental body, as that term is defined in the Texas Government Code.

38. Section 551.142(a) of the Texas Government Code authorizes any interested person, including a member of the news media, to bring a civil action seeking either a writ of mandamus or an injunction. Plaintiff, Dolcefino Consulting, is an investigative media consulting firm that qualifies as a member of the news media. The President of Dolcefino Consulting, Wayne Dolcefino, is a decorated journalist with thirty Emmy awards for investigative journalism. The firm investigates both public and private corruption and has published hundreds and hundreds of news reports via video-produced and disseminated video news stories on matters of public interest, and private concern implicating public interest. Galena Park violated the Texas Open Meetings Act by refusing to allow Mr. Dolcefino to comment and/or participate in the City Council meetings held on July 6, 2021 and August 3, 2021.

39. Section 551.142(b) authorizes a court to award reasonable attorney fees and

litigation costs to the party who substantially prevails in an action brought under the Act.

40. Plaintiff seeks to recover monetary damages and attorney fees under Chapter 551 of the Texas Government Code.

VIII. ATTORNEY'S FEES

41. Pursuant to Chapter 37 of the Texas Civil Practice & Remedies Code and Chapters 551 and 552 of the Texas Government Code, Plaintiff specifically requests that it be awarded reasonable attorney fees and costs.

IX. PRE- AND POST-JUDGMENT INTEREST

42. Plaintiff seeks pre-judgment and post-judgment interest at the highest allowable rate under Texas law.

X. RESERVATION OF RIGHTS

43. Plaintiff reserves the right to prove damages at trial. Plaintiff further reserves the right to amend this Petition to add additional causes of action and/or parties as discovery continues.

XII. CONDITIONS PRECEDENT

44. Pursuant to Rule 54 of the Texas Rules of Civil Procedure, all conditions precedent to Plaintiff's rights to recover and Defendant's liability have been performed or have occurred.

XIII. JURY DEMAND

45. Plaintiff demands a trial by jury on all issues and tenders the applicable fee.

XIV. REQUEST FOR DISCLOSURE

46. Pursuant to TEX. R. CIV. P. 194 of the Texas Rules of Civil Procedure, Defendant is requested to disclose, within 30 days of service of this request, the information or material described in TEX. R. CIV. P. 194.2 (a) through (l).

X. CONFLICT OF INTEREST

47. The City Attorney of Galena Park, Robert Collins, is a party to this lawsuit who has

personal knowledge and was an active participant in the events that give rise to this lawsuit. Therefore, he is disqualified from representing Galena Park under Rule 3.08 of the Texas Disciplinary Rules of Professional Conduct (Lawyer as Witness).

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Dolcefino Communications, LLC d/b/a Dolcefino Consulting prays that citation be issued and served upon Defendants, City of Galena Park, Mayor Esmerelda Moya, City Attorney Robert Collins, and City Secretary Mayra Gonzalez, commanding Defendants to appear and answer this lawsuit and that upon final hearing of this cause, that Plaintiff have a judgment against Defendants in an amount to be determined by the Court and Jury, for all damages, plus pre-judgment interest and post-judgment interest, costs of Court, attorney fees, mandamus relief, and for such other and further relief, at law or in equity, both general and special, to which Plaintiff may be entitled.

DATED: August 17, 2021.

Respectfully submitted,

JEFF DIAMANT, PC



Jeff Diamant
State Bar No. 00795319
Thomas "Tal" DeBauche
State Bar No. 24092331
909 Fannin Street, Suite 2615
Houston, Texas 77010
Phone: (713) 789-0111
Fax: (888) 798-0111
Email: service@jeffdiamantlaw.com

Attorneys for Plaintiff