



City of Austin

Law Department

City Hall, 301 West 2nd Street, P.O. Box 1546
Austin, Texas 78767-1546

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August 17, 2015

Via Email:

Bill Aleshire
AleshireLAW, P.C.
700 Lavaca, Suite 1400
Austin, Texas 78701

RE: Cause No. D-1-GN-15-002291, *Brian Rodgers v. The City of Austin*; In the 98th District Court of Travis County, Texas

Dear Bill:

I write in response to your email of August 11, 2015 email. As you know, I already responded to portions of that email last week. Specifically, I have responded to paragraphs 2-4 of your email. In addition, the City is providing additional documents pursuant to Mr. Rodgers' PIRs for communications between the PIR Team and City departments concerning both the Bull Creek PIR (P3) and the Decker Lake Genesis PIR (P4). The City is also providing additional communications that are responsive to both Decker Lake PIRs (P2 & P4) (it is possible some of the communications have been produced before, but, as the City does not keep a centralized record of production, it is difficult for me to be certain). Finally, the CD will include some additional communications responsive to P1. These documents are on a CD that is being sent to your office by courier.

a. Sanctions Threat

In the first paragraph of your email, you state that you intend to seek sanctions against the City because I signed a "false pleading" in the City's answer. In particular, the City pled an affirmative defense that "Plaintiff's claims are moot because it has voluntarily produced all public records that are responsive to the public information requests identified in the petition." First, I did not file this pleading in bad faith or with the purpose to harass your client. The pleading centers on mootness. As you know, mootness is "standing in a time frame." A lawsuit can become moot at any time during its course. The affirmative defense is



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not predicated on the notion that the City had (as of that date) produced all of the documents at the moment the suit was filed, but that it would produce all of the documents before the conclusion of suit, and would eventually assert that the suit was moot. Perhaps the affirmative defense was inartfully worded, but that does not make it a false pleading because a lawsuit can become moot at any time. Regardless, because mootness and standing do not need to be asserted as affirmative defenses, I will amend the answer and remove that particular affirmative defense.

The admission response stems from the same issue. I will also amend that response.

b. The City's Discovery Requests

The City's discovery requests are, however, a different matter. Those requests (RFP 1-8) are specifically tailored so that the City can discover all of the documents that Mr. Rodgers has received in response to these PIRs. The City does not keep a central record of what it produces in response to PIRs. But even if it did keep such records, it is possible there could be some dispute between the parties over what the City sent and what Mr. Rodgers received. This discovery is aimed at resolving any such dispute. If Mr. Rodgers wishes to make production of the documents less burdensome, he can simply make them available to the City for inspection or copying.

In the spirit of compromise, however, I am willing to withdraw the discovery requests if you will stipulate to a list (by identity or by category) of documents that Mr. Rodgers has not received. For example, your list could indicate that he has not received all communications regarding the genesis of Decker Lake that occurred between a particular date range; that he has not received all communications regarding negotiation of contract terms for Decker Lake, or that he has not received a copy of a letter from the City to the State regarding Bull Creek. For each item on the list, I'd ask (before accepting the stipulation) that you briefly indicate the factual basis for each contention. I would also want the stipulation to be admissible if necessary. This compromise will avoid your client having to produce documents he has already received from the City.

c. Objection to Documents from Sue Edwards

The City will not waive its objection. As indicated in her verified interrogatory response, Ms. Edwards did not have any responsive correspondence with 3 of the 4 individuals named in the interrogatory, and she did not have any correspondence with Mr. Suttle on topics related to any



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of the PIRs. Your contention that you want to view her correspondence with Mr. Suttle to glean some "pattern or practice" does not make sense to me. The frequency of her communications with a person has nothing to do with the subjects of those communications.

Nonetheless, if you will agree to forgo any motion to compel, I will provide you with the dates and general subject matters of Ms. Edwards' correspondence with Mr. Suttle that occurred in the specified time frame. This information should allow you to determine whether Mr. Suttle and Ms. Edwards frequently communicate by email, and on what sort of topics.

I am hopeful that we can work together to resolve these disputes and move forward with getting your client the documents he is entitled to receive under the PLA.

Sincerely,


Chris Coppola
Assistant City Attorney

