

shown on page two of the Report). The failure to produce a complete and legible copy of the document lends further support to Plaintiff's position that its mandamus claim is not moot.¹

Fact issues also remain as to the existence of text messages responsive to Plaintiff's May 2013 request. In response to discovery requests, during his deposition, and in his Affidavit supporting the Plea to the Jurisdiction, Defendant made several statements about text messages showing that there is a fact issue as to whether text messages responsive to the PIR still exist, and why some text messages were no longer available. *See* Pl.'s Mot. Partial Summ. J. at 10-12 and attached Exhibits 6, 9, 12, & 15. This fact issue cannot be negated by Defendant's most recent affidavit statement that he does not find any responsive text messages on his phone at this time. It is well settled that summary judgment is inappropriate if the credibility of a witness or affiant is a factor in the disposition of the case. *See, e.g., Casso v. Brand*, 776 S.W.2d 551, 558 (Tex. 1989) ("If the credibility of the affiant or deponent is likely to be a dispositive factor in the resolution of the case, then summary judgment is inappropriate."). It is not the trial court's role, at summary judgment, to evaluate the credibility of the affiants or the weight of the summary judgment evidence, but only to determine whether a disputed fact issue exists which should be resolved by the trier of fact. *State v. Durham*, 860 S.W.2d 63, 66 (Tex. 1993). These principles apply with equal force to ruling on a plea to the jurisdiction. *Stewart v. City of Corsicana*, 211 S.W.3d 844, 849-50 (Tex. App.—Waco 2006) *rev'd on other grounds*, 249 S.W.3d 412 (Tex. 2008).

¹ At the conclusion of the hearing, Defendant's counsel suggested that it may be that Defendant does not have a better copy of the map. This suggestion, in Plaintiff's view, is highly unlikely. The map was produced by a computer, and the committee almost certainly referenced a legible copy. If produced by CAMPO or County staff, Defendant, as Commissioner and CAMPO member, has a right of access to a legible copy.

B. The bases for Plaintiff's request for declaratory and injunctive relief are shown as a matter of law; the question of an appropriate remedy remains.

In the context of Plaintiff's argument that Defendant violated the TPIA by failing to "promptly produce" public information as required by Texas Government Code section 552.221, the Court asked whether the TPIA required retention of public records. Plaintiff's counsel referenced the Court to TPIA sections 552.004 and 552.201(b). In addition, the TPIA specifies duties of public information officers, which are "subject to penalties provided in this chapter." Those duties are to: "(1) make public information available for public inspection and copying; **(2) carefully protect public information from deterioration, alteration, mutilation, loss, or unlawful removal;** and (3) repair, renovate, or rebind public information as necessary to maintain it properly." Tex. Gov't Code § 552.203 (emphasis added).

In addition, counsel for Plaintiff should have provided the citation for *Heckman v. Williamson County*, 369 S.W.3d 137, 166-67 (Tex. 2012), cited at the hearing for the proposition that the mere adoption of new policies does not moot a case where a plaintiff's complaint focuses on the defendant's actions and behavior.

Finally, while Plaintiff's live pleadings ask for specific injunctive relief, it should have been made clear to the Court that Plaintiff also seeks, in the alternative, equitable relief deemed appropriate by the Court under the circumstances. Those circumstances include the adoption and brief glimpse of practice under a new Travis County Precinct Three Policy that does not align with the adopted Travis County policy, and which appears to invite further violations of the TPIA by Defendant and his staff.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Plaintiff Save Our Springs Alliance's Post-Argument Correction and Clarifications** has been served on the following counsel and parties of record on this 17th day of July, 2015 via electronic service through eFile.TXCourts.gov.

Anthony J. Nelson
Andrew M. Williams
314 West 11th Street
Room 300
Austin, TX 78701

/s/ Kelly D. Davis
Kelly D. Davis

Clipped 4 pgs - III — if not releasing in final form,
h marked under III

CAMPO SH45 SW Progress Report

Submitted by:

Travis County Commissioner Pct. 3
Gerald Daugherty
Committee Chair

March 25, 2013

ORR 2140125

Committee Members

- Travis County Pct. 3
Commissioner Gerald Daugherty
- Hays County Pct. 2, Commissioner Mark Jones
- City of Austin Council Member Bill Spelman
- Becky Bray, Citizen
- Susan Narvaiz, Committee Facilitator

ORR 2140126

Committee Charge & Approach

- Charge:
 - CAMPO Chairman Will Conley created a committee in January 2013 charged with how to build SH45 SW (a 3.1 mile road that will connect Loop 150th in Austin/Travis County to FM 1626 where Travis and Hays County join) as soon as possible. The Committee will bring back to CAMPO recommendations for the alignment, cost (including likely funding sources), environmental mitigation plans and a timeline for starting and finishing the project.
 - The composition of the Committee consists of Pct 3. Travis County Commissioner Gerald Daugherty, (Chairman), Pct 2. Hays County Commissioner Mark Jones and City of Austin Councilmember Bill Spelman. Jones and Spelman are Vice Chairmen of the Committee.
- Approach:
 - The Committee (although at times scheduling conflicts prohibits all three from meeting at the same time) will be meeting with TxDOT, RMA, Engineering Firms and the Barton Springs Edwards Aquifer District (BSEAD) to establish a relationship that will enhance our ability to accomplish our charge and goal.

ORR 2140127

Committee Activities

- Committee Meetings will be held on Wednesday afternoons at the office of Commissioner Gerald Daugherty unless otherwise noted. Times may vary based on schedules.
- Feb. 16, 2013
 - Initial meeting with one of the Green Mobility Challenge award winners to receive presentation and Q&A with attendees.
- March 6, 2013
 - Briefing with TxDOT officials at their offices in South Austin. Very informative and positive meeting providing guidance on legal conditions contained in Consent Decree, suggestions and agreement to get road docs “cleaned up” and initiate State Level EA.
- March 11, 2013
 - Review of project with CTRMA officials at their office. Meeting was well received, informative with desire to assist committee in formulating best approach to phasing of this road project. Agreed to review TNR and contact CAMPO for update on modeling data.
- April 3, 2013
 - Meeting scheduled at 1:30 to receive presentations from additional award winners of Green Mobility Challenge.

ORR 2140128

Planned Committee Activity

- Presentation and Tour of Wonder World Extension in San Marcos
 - Committee has received a project summary of this 3.5 mile divided, limited access parkway bordering parks and undeveloped properties in San Marcos. It is a community amenity that is a model of conservation, preservation and protection. Due to its similar sensitive natural resources the committee will be hearing from project team members to learn best practices and successes.
- Soon to appear before the Barton Springs Edwards Aquifer Authority to provide update on committee work.
- Utilize Social Media to keep public informed on Committee work.

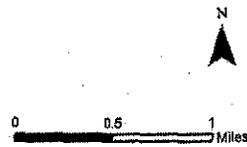
Visit greenmobilitychallenge.com for more information on the award winning designs.

SH 45 SW Schedule (Draft 5/8/13)			
2013	FM 1626	CAMPO	SH 45 SW
May	North seg. under const.		
June		Approve 2040 Forecasts	
July		Daugherty Present SH 45	
August			
September		2040 Financial Forecasts	
October			
November		Round 1 Public Outreach	
December		Scenario Development	
2014			
January		Round 2 Public Outreach	
February	South seg. bid letting	Project Prioritization	
March		Round 3 Public Outreach	
April			
May			
June			
July		Present Alt. Scenarios	
August			
September		Pick Preferred Scenario	
October		Round 4 Public Outreach	
November	North seg. complete		
December		Round 5 Public Outreach	
2015			
January		Present Draft 2040 Plan	
February		Public Hearing on Draft Plan	
March			
April		Final Public Hearing on Plan	
May		2040 Plan Adoption	
June			
July			
August			
September			
October	South seg. complete		
November			
December			
2016			
January			
February			
March			
April			
May			
June			
July			
August			
September			



 SH 45 Study Area

SH 45
Project Location



ORR 2140131