

CAUSE NO. D-1-GN-18-006098

TEXAS PROTAX-AUSTIN, INC.;	§	IN THE DISTRICT COURT
FIVE STONE TAX ADVISERS, LLC;	§	
46 COMMERCIAL PROPERTY OWNERS	§	
113 RESIDENTIAL PROPERTY OWNERS	§	
Plaintiffs,	§	
vs.	§	
	§	OF TRAVIS COUNTY, TX
TRAVIS APPRAISAL REVIEW BOARD;	§	
MARYA CRIGLER, CHIEF APPRAISER,	§	
(In her Official Capacity)	§	
Defendants	§	201 ST JUDICIAL DISTRICT

PLAINTIFFS’ 2nd SUPPLEMENTAL PETITION
ADDING OPEN GOVERNMENT VIOLATION CLAIMS
AGAINST DEFENDANT TRAVIS APPRAISAL REVIEW BOARD

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiffs are residential and commercial property owners who are customers of tax agent firms Texas Protax-Austin and Five Stone Tax Advisers who file this Supplemental Petition against Defendant Travis Appraisal Review Board for violation of the Texas Public Information Act and the Texas Open Meetings Act.

A. SUMMARY

“Sunlight is said to be the best of disinfectants...” Justice Louis D. Brandeis

1. When it comes to disclosing basic records of their meetings, many governmental bodies—including almost all the major entities in Travis County—post *online* their meeting agendas, the agenda backup material for each agenda item, and their meeting minutes, and they video record their meetings making those recordings available online as well. The glaring exception is the Travis County Appraisal Review Board, who does not make any recordings of its meetings, and only posts its meeting notices online because that is required by law (Tex. Gov’t Code section

552.043). Now, as explained below, the TARB won't even provide its basic meeting records in response to a public information request.

2. On October 8, 2018, Plaintiffs sued the TARB and Chief Appraisers for their “unlawful manipulation and corruption of the 2018 tax appraisal protest process in Travis County that leaves property owners without the Appraisal Review Board (ARB) hearing to which they are entitled by law.” Plaintiffs specifically sued TARB claiming, in part, that the TARB violated the Texas Open Meetings Act (TOMA) on July 14, 2018 when they, supposedly, dismissed Plaintiffs tax appraisal protests without listing that subject on their meeting notice. In response to this lawsuit, TARB has now decided to resist new public information requests and try to conceal its meeting minutes, notes, and backup material provided to Board members for all its meeting occurring *after* July 14th. TARB is refusing to disclose this basic public information requested by Protax on November 29th and December 7th. Exhibits P-1 and P-2 attached ¹. TARB is paranoid that, since Protax sued TARB for the TOMA violation that occurred on July 14th, if Protax gets to see the meeting records of *other* TARB meetings, that Protax intends “to broaden the Plaintiffs’ claim for OMA violations, which could likely result in the joinder of the ARB’s Chair [Betty Thompson] in the suit.” Exhibit P-3 (TARB Letter Requesting an Attorney General Ruling to withhold its meeting records). ²

3. So, the TARB wants to keep records of its meetings secret *because* they are afraid that if those records are disclosed, they will reveal additional violations of the Texas Open Meetings Act.

¹ Request for records of TARB board meetings since September 1, 2018 to the date of the request for “copies of the notices of the meetings, the minutes of the meetings, and any backup or explanatory material that was provided to the Board Members for the meetings, and, the secretary’s notes for the not yet approved or published minutes of the last meeting.” The request included any audio recordings made of the meetings. TARB claims there were not recordings made.

² Protax is not aware of any TPIA or TOMA authority to name the TARB Chair as a defendant under those laws that only permit suits against the governmental body, *i.e.*, the TARB.

Fortunately, there is no basis in Texas law that allows a governmental body to conceal its violations of open government laws by violating open government laws.

CLAIM FOR RELIEF

4. In this lawsuit, Protax and the other Plaintiffs sued TARB for one distinct TOMA violation related to the meeting on July 14, 2018 at which the TARB supposedly dismissed Plaintiffs' tax appraisal protests. That is what the lawsuit *relates to*. Section 552.103 of the TPIA permits a governmental body to withhold "information *relating to* litigation" to which the governmental body "is or may be a party." This is referred to as the TPIA "litigation exception." To use this exception to disclosure, the governmental body has the burden to show *both* that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information and (2) the information at issue *is related to* that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d479,481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a).

5. "The litigation exception was intended to prevent the use of the Open Records Act as a method to avoid discovery rules." Attorney General Opinion JM-1048 (1989). Ironically, had the Plaintiffs tried to use the discovery rules to request the TARB meeting records for meetings that occurred *after* the July 14th date at which the protests were supposedly dismissed, the Defendants might well have won an objection that records of those other meetings was not relevant to Plaintiffs' claims related to the July 14th meeting or to Plaintiffs claim that their tax appraisal protests were dismissed at this meeting without that subject being on that meeting agenda.

Apparently, the TARB did not take any action related to Plaintiffs during the meetings subject to Protax’s public information requests, *i.e.*, after September 1st. So, not only was the Protax public information request not “related” to the lawsuit claim, Protax likely could not have used discovery in this lawsuit to obtain those meeting records. Thus, the “litigation exception” does not apply to the requested records. Ironically, if the litigation exception *did* apply, then Protax, as a party to the lawsuit, could obtain the records anyway using the discovery rules. So, TARB’s fight over such basic meeting records may *delay* exposure of the records, but it won’t *prevent* eventual exposure of the meeting records. TARB’s resistance to transparency, this waste of time, is also driving up taxpayer costs for attorney fees, at least.

6. TARB also refused to provide the meeting *minutes* of its post-July 14th meetings. This is a flagrant violation, not just of the TPIA, but of the TOMA section 551.022 that makes meeting minutes subject to disclosure without any exception. Tex. Gov’t Code Sec. 551.022. (“MINUTES AND RECORDINGS OF OPEN MEETING: PUBLIC RECORD. The minutes and recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee.”). By its refusal to disclose the minutes, the TARB violated both the TPIA and the TOMA.

7. While TARB may be correct—that revealing its meeting records will expose additional TOMA violations by the TARB—the records requested are not subject to any exception to mandatory disclosure. By claiming the “litigation exception,” the TARB has distinguished itself as being one of the only governmental bodies in Texas to ever claim that *such basic records of its board meetings* will not be disclosed *to anyone*. TARB cannot just deny access to Protax to these records, because if TARB discloses these meeting records to anyone else, TARB will violate 2 other provisions of the TPIA, Sections 552.007 and 552.223:

Sec. 552.007. VOLUNTARY DISCLOSURE OF CERTAIN INFORMATION WHEN DISCLOSURE NOT REQUIRED. (a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.

(b) Public information made available under Subsection (a) *must be made available to any person.*

Sec. 552.223. UNIFORM TREATMENT OF REQUESTS FOR INFORMATION. The officer for public information or the officer's agent *shall treat all requests for information uniformly* without regard to the position or occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media.

8. Plaintiffs seek disclosure of the requested records pursuant to TPIA section 552.321 and seek enforcement of the TOMA section Sec. 551.142 to stop, prevent, or reverse a violation or threatened violation of this chapter by members of the TARB.

PRAYER

For these reasons, Plaintiffs make this supplemental claim for a court order to require TARB to disclose to Protax the records Protax requested from TARB on November 29, 2018 and December 7, 2018, and to grant all further relief to which Plaintiffs may be entitled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of foregoing document was served as shown below on the following party on December 13, 2018 Via efile/eserve:

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