

CAUSE NO. D-1-GN-16-004769

DAVID A. ESCAMILLA,
Travis County Attorney
Plaintiff

v.

KEN PAXTON
State of Texas Attorney General
Defendant

§ IN THE DISTRICT COURT
§
§
§
§ OF TRAVIS COUNTY
§
§
§
§ 261st JUDICIAL DISTRICT

**INTERVENOR/CROSS-PLAINTIFF TARA CORONADO'S
SPECIAL EXCEPTIONS & MOTION TO STRIKE
PLAINTIFF TRAVIS COUNTY ATTORNEY'S UNAUTHORIZED CLAIMS**

Intervenor/Cross Plaintiff Tara Coronado asks the Court to strike pleadings by the Plaintiff Travis County Attorney that are prohibited by Tex. Gov't Code (TPIA) section 552.326.

SUMMARY OF MOTION

When a governmental body, such as the County Attorney, seeks to withhold public information after the Attorney General has ruled the information must be disclosed, the TPIA limits what claims the government body can bring in a lawsuit challenging the Attorney General's ruling. TPIA section 552.326 says, "*the only exceptions* to required disclosure [] that a governmental body *may raise in a suit* filed under this chapter are exceptions that the governmental body raised before the attorney general in connection with its request for a decision []."¹ Twice now, the Travis County Attorney has filed amended pleadings that seek to add claims of exceptions

¹ Tex. Gov't Code Sec. 552.326. FAILURE TO RAISE EXCEPTIONS BEFORE ATTORNEY GENERAL. (a) Except as provided by Subsection (b), the only exceptions to required disclosure within Subchapter C that a governmental body may raise in a suit filed under this chapter are exceptions that the governmental body properly raised before the attorney general in connection with its request for a decision regarding the matter under Subchapter G.
(b) Subsection (a) does not prohibit a governmental body from raising an exception:
(1) based on a requirement of federal law; or
(2) involving the property or privacy interests of another person.

to disclosure that are clearly prohibited by TPIA section 552.326. To avoid a waste of the court's and the parties' resources, this motion to strike is filed to enforce section 552.326 before briefs are due and trial-prep and trial is commenced.

The Pleadings and Status of the Case

This case is about whether the Travis County Attorney can keep secret a written agreement (a Deferred Prosecution Agreement (DPA)) the County Attorney made with a criminal defendant to settle and dismiss the criminal case against the defendant. Intervenor/Cross Plaintiff Tara Coronado, the criminal defendant's ex-wife (and her attorney Laura Bates) requested a copy of the DPA. The County Attorney refused to disclose the DPA and, on July 15, 2016, requested a ruling (pursuant to TPIA section 552.301) from the Attorney General that gave rise to this litigation. For purposes of this motion it is important to note that the only exception to required disclosure that the County Attorney raised to the Attorney General was part of the "law enforcement" exception, TPIA section 552.108(a)(1). See attached Motion To Strike – Exhibit 1.

The Attorney General ruled that the DPA was subject to disclosure. So, the County Attorney filed suit against the Attorney General. See Plaintiff's Original Petition at ¶ I ("This suit is brought pursuant to Tex. Gov't Code § 552.324, to challenge a letter ruling of the Attorney General (OR2016-21139)...). *In his original petition (which was filed within the 30-day deadline for bringing the suit), the County Attorney raised solely that the DPA could be withheld under the exception to disclosure of TPIA section 552.108(a)(1).* See Plaintiff's Original Petition filed of record on September 26, 2016 at ¶¶ VII and VII (Relief Sought), citing only TPIA section 552.108(a)(1).

But then—almost 5 months later, on February 19, 2017—the County Attorney filed his 1st Amended Petition raising a distinct, new, additional exception to disclosure of TPIA section

552.108(a)(2). See Plaintiff's First Amended Petition at ¶¶ VII and VIII citing TPIA section 552.108(a)(1) and section 552.108(a)(2). On February 22, 2017, Tara Coronado intervened in this lawsuit (*pro se*, as the requestor of the DPA). Just a few days ago, on May 19, 2017, the County Attorney filed his Second Amended Petition, noting again that "This suit is brought pursuant to Tex. Gov't Code § 552.324, to challenge a letter ruling of the Attorney General (OR2016-21139)" In addition to section 552.108(a)(2), this pleading added two additional exceptions to disclosure that the County Attorney had not raised with the Attorney General: TPIA section 552.301 (the so-called "litigation exception") and section 552.107 (attorney disciplinary rules). See Plaintiff's Second Amended Petition at ¶¶ VIII and IX.

ARGUMENT & AUTHORITIES

It is uncontestable that the County Attorney brought this lawsuit against the Attorney General pursuant to TPIA section 552.324 after availing himself of the letter-ruling process under section 552.301, in which the County Attorney was free to raise any and all exceptions to disclosure he saw fit. Only after the Attorney General ruled and the County Attorney sued to contest that ruling did Tara Coronado intervene.

The TPIA regulates both the process and claims that can be brought by the County Attorney when he files a lawsuit against the Attorney General to challenge the Attorney General's TPIA ruling. The government is not given two—or, as in this case, three—bites at the apple to decide which exceptions to disclosure to "raise" in his lawsuit that he did not raise in the administrative ruling process before the Attorney General. Citizens who litigate against the government are often blocked from such tactics for "failing to exhaust administrative remedies"—and the County Attorney is not exempt from that same concept incorporated into to section 552.326. Section 552.326 clearly prohibits the County Attorney from even *raising* exceptions to disclosure that he

did not present to the Attorney General. All the exceptions to disclosure that the County Attorney has raised are *discretionary* exceptions, in that the DPA is not “confidential” and the additional exceptions raised by the County Attorney in his pleadings can be—and have been—waived.

“The exceptions to disclosure under the PIA are to be narrowly construed. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 157. A governmental body that wishes to withhold requested information must request a determination from the attorney general, asserting which exceptions under the PIA permit the governmental body to withhold the information. *Id.* A governmental body generally waives any exception to disclosure that it fails to raise before the attorney general. Tex. Gov't Code Ann. § 552.326 (West 2004).”

Boeing Co. v. Abbott, 412 S.W.3d 1, 8 (Tex. App.—Austin 2012), rev'd sub nom. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015) (emphasis added).

By not raising to the Attorney General the additional exceptions to disclosure that the County Attorney now seeks to add to his lawsuit, the County Attorney waived those discretionary exceptions and is barred by TPIA section 552.326 from raising them in his lawsuit now.

Need for a Timely Decision

Under the Agreed Scheduling Order of this case, there was only 12 days left in which parties can serve discovery requests after the County Attorney filed his amended pleading adding claims not before asserted. Discovery and opportunity for amending/supplementing pleadings ends on June 30th, and the first trial brief is due (from the County Attorney) on July 10th with response briefs due just two weeks later. This motion is filed with the hope that the Court will rule on the issue of the County Attorney raising exceptions to disclosure that are not authorized by TPIA section 552.326 well before the discovery deadlines pass and briefs are being prepared.

Counsel for Tara Coronado had suggested to other counsel that this motion and the response be decided on submission, but the County Attorney insists on an oral hearing.

PRAYER

Tara Coronado asks the court to strike Paragraphs VII, VIII, and IX of the County

Attorney's 2nd Amended Petition as being in violation of Tex. Gov't Code section 552.326 and order that the only exception to disclosure that the County Attorney may raise in this proceeding is Tex. Gov't Code section 552.108(a)(1). Tara Coronado respectfully asks that the Court expedite a ruling on this motion so that parties are timely aware of the issues that will be subject to remaining discovery, briefing, and trial.

Respectfully submitted,



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CERTIFICATE OF CONFERENCE

I, Bill Aleshire, confirm that I did confer with opposing counsel, Tim Labadie, regarding the issues raised in this motion, by both email and a phone call, to attempt to reach an agreement. We were unable to agree.



Bill Aleshire

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document has been served on Defendants by e-served on this 23rd day of May, 2017.

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