

CAUSE NO. D-1-GN-15-002291BRIAN RODGERS
Plaintiff§
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§
§
§
§

IN THE DISTRICT COURT

v.

TRAVIS COUNTY

THE CITY OF AUSTIN
*Defendant*98TH JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION FOR MANDAMUS

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiff Brian Rodgers ("Rodgers") files this Original petition against Defendant City of Austin ("City") and alleges as follows:

NATURE OF THE CASE AND DISCOVERY CONTROL PLAN

1. a. This lawsuit demonstrates that the claim by management of the City of Austin that it is dedicated to "transparency and accountability" is a farce. Rodgers requested public information about 3 controversial matters:

(1) correspondence between City officials and the Downtown Austin Alliance during the period of time they were conjuring up the ill-fated proposal for a light-rail line;

(2) records about how the scheme got hatched to let over 700 acres of Walter E. Long parkland be turned over to a for-profit developer without getting voter approval as required by the Austin City Charter and records about the contract negotiations; and

(3) records about the City's failure to timely respond to notice from TxDOT losing the opportunity to purchase surplus state property on Bull Creek road that could have been developed as a public park but instead went to a private, for-profit developer.

In response, City management blatantly violated the Texas Public Information Act (TPIA)¹

¹ Tex. Gov't Code ch. 552.

by refusing to promptly supply (or supply at all) public information on these controversial matters that could be embarrassing to the City, its current or prior officials, and its management staff. Rodgers will prove that City management completely ignored requests for information, made unauthorized and unexplained redactions, omitted responsive records, and despite warning, continue to stall while the controversial matters progressed for decision by the City Council. Even after the City was clearly warned in writing that it had failed to comply with the TPIA, city management stonewalled, making this lawsuit necessary pursuant to TPIA section 552.321.

b. It was only 8 months ago that City of Austin officials completed deferred prosecution for violating open government laws. Rodger's experience with trying to get complete disclosure of public information demonstrates that City management has not learned much from the past and its process for responding to public information requests—supposedly “promptly” as required by the TPIA—is in utter shambles.

c. Discovery will be conducted under TRCP 190.3, Level 2.

CLAIM FOR RELIEF

2. Plaintiff seeks monetary relief of \$100,000 or less and nonmonetary mandamus relief. TRCP 47(c)(2).

PARTIES

3. a. Plaintiff is Brian Rodgers, the requestor of information under the TPIA, and a resident of the City of Austin, Travis County, Texas. The last three digits of Brian Rodger's driver's license are 357, and the last three digits of his Social Security number are 488. Mr. Rodgers can be served through his attorney-of-record in this case.

b. Defendant City of Austin is a defendant pursuant to TPIA section 552.321 as the governmental body to whom Rodgers submitted his request for information and that refused to

supply the public information. Pursuant to Tex. Civ. Prac. & Rem. Code section 17.024(b), the City can be served through its Mayor, The Honorable Steve Adler, at the Mayor's office located at 301 W. 2nd Street, Austin, Texas 78701.

JURISDICTION & VENUE

4. The Court has jurisdiction over this case under TPIA section 552.321 which also makes venue mandatory in this Court.

FACTS

City Ignored Request for Correspondence with the Downtown Austin Alliance

5. a. In 2014, Rodgers made an open records request to the Downtown Austin Alliance (DAA) for financial records and correspondence the DAA had with City officials about the light rail bond proposal and the DAA's controversial, if not blatantly illegal, campaign contribution to the PAC supporting that City bond proposition.

b. Even though its own annual report shows that the DAA receives over 98% of its revenue from public funds, the DAA asserted it was not supported with public funds, making it a "governmental body" under the TPIA, and asked for a ruling by the Texas Attorney General. The Texas Attorney General ruled in Rodgers' favor that the DAA's records were subject to disclosure under the TPIA.

c. The DAA sued the Attorney General to challenge the ruling, but when Rodgers notified the DAA that, as the records requestor, he was going to intervene in that lawsuit, the DAA dropped the lawsuit and indicated that they would provide Rodgers with the records he had requested.

d. After reviewing the correspondence the DAA provided—supposedly all of the correspondence they had with any city personnel between September 1, 2013 and December 10,

2014 (the date of Rodgers' last records request), Rodgers was convinced that the DAA was hiding some of that correspondence.²

6. So, on April 23, 2015, Rodgers submitted a public information request to the City giving the City certain URL email accounts of the DAA to obtain emails from or to City personnel during the same time period (9/2013 – 12/2014) “regardless of whether [the City personnel were] using a City or personal email account.” EXHIBIT P-1. While the former Mayor and Council members with whom the DAA probably had correspondence during that time have left office, the Texas Local Government Records Act and state rules would require their “official business” emails to be retained by the City for a minimum of 2 years. Despite being warned of the TPIA violation, the City has ignored this request and provided no records as of the date of this lawsuit.

Rodger's March 16 Request for Decker Lake Golf Scheme Negotiations

7. On March 16, 2015, Rodgers asked the City for records of its contract negotiations with Decker Lake Golf. EXHIBIT P-2 (second page). This was a proposal by a developer to take over 700 acres of parkland at the Walter E. Long Park and turn it into a for-profit, high-end golf course without asking the voters of Austin—as the City Charter requires—to permit such a loss of parkland.

a. The City provided records, but Rodgers' attorney advised the City staff on multiple occasions that a review of those records showed very suspicious gaps in the emails. For example, the golf course scheme proposed to make a “concession agreement” of 90 years with the City for the parkland, recognizing that if they called it a “lease” the City Charter provision would clearly

² The request to the DAA was specifically for: “A copy of any correspondence (including paper or electronic communication within the definition of “public information” cited above) since September 1, 2013 between any officer, employee, attorney or agent of Austin DMO, Inc. and the Mayor of Austin, any City Council member of Austin, the City Manager, Assistant City Manager(s), or attorney for the City of Austin about any matter involving official business of the City of Austin or of Austin DMO, Inc.”

apply. But to obfuscate whether Decker's concession proposal was the same thing as a lease, the City staff negotiated a provision that would allow the City Council, for any reason or no reason, to cancel the agreement regardless of whether Decker complied with the agreement or not. The publicly disclosed records does not show the back-and-forth between the City staff or attorneys and Decker over this highly sensitive issue.

b. On April 7, 2015, Rodgers' attorney sent the City Attorney's office an email noting a mysterious gap before and after Decker Golf representative (Bellomy) wrote to City coordinator (Nicholson) that Decker would agree to that draconian cancellation provision. Bellomy's email of September 15, 2014 to Nicholson said, "We understand and accept the provisions of the City Council's ability to terminate a concession agreement and look forward to meeting with the Park Board on September 23, 2014 and City Council action on October 2nd." Apparently, this email was responding to an email that was not disclosed, and a suspicious gap in the email traffic between Decker and the City existed in the disclosed records from August 29th to September 15th and then from that date until October 21st. It is highly suspicious that in the midst of negotiating such a controversial contract provision, there was such dead silence for 2 weeks before that Bellomy email and almost a month after—no emails between Decker and the City at all.

**Rodger's March 16 Request for Records Related to City's Loss of Opportunity to
Acquire the Bull Creek Parkland from TxDOT**

8. Rodgers found it highly ironic and frustrating that, in the midst of this scheme to lose over 700 acres of parkland to unneeded golf courses, the City flubbed an opportunity to acquire surplus TxDOT property for a 75-acre park along Bull Creek. So, on March 16, 2015, he submitted a request for those records. EXHIBIT P-3 (second page). After an inordinate, unjustified, and unexplained delay of almost 2 months, the City provided some records. However, as is shown

below, they have refused to provide information about how this request was processed internally. (See “PIR Processing Requests” below).

Rodger’s March 19 Request for Records About the “Genesis” of the Decker Golf Scheme

9. a. On March 19, 2015, Rodgers asked the City for its correspondence and records about how, apparently in 2013, the scheme was hatched to convert the Walter E. Long parkland to golf courses and to do so by bypassing the voters. EXHIBIT P-4 (second page). This request was made after seeing a published interview with City PARD Director Hensley by the American Statesman Editorial Board, in which Hensley claimed a developer brought the idea to the City as a “license” agreement (to try to bypass the voter-approval required by the City Charter. Rodgers wanted to see the interaction between City staff and the developer, particularly about whether the proposal would require voter approval.

b. On April 8, 2015—14 business days later—the City disclosed 8 pages of meeting calendaring information (only) in response to this request for all records about how the Decker Lake Golf scheme started. *Not a single email—internally within the City or between City personnel and the Decker Lake Golf developer or its lobbyist during the genesis of this scheme—before the RFQS was issued in the Spring 2014—has been disclosed by the City.* The records the City disclosed, showed that a meeting on March 26, 2013 with PARD Director Hensley (and staff) and Richard Suttle³ and developer Warren Hayes. The next meeting was organized by ACM Sue Edwards and was with PARD staff and Warren Hayes on July 3, 2013. The next meeting was organized by PARD Director Sarah Henley for August 20, 2013 with PARD staff and Richard

³ Another open records request for City Clerk lobby registration records indicated that Richard Suttle was not at the time, nor subsequently in 2014, registered as a lobbyist for the developer Decker Lake Golf or its principals.

Suttle, Warren Hayes, and someone identified only as jfalk@abaustin.com. The next meeting disclosed was on October 25, 2013 and was organized by ACM Sue Edwards with Richard Suttle and Warren Hayes and ACM Bert Lubreras and PARD staff.

c. Either one must believe that this huge, unprecedented transfer of City parkland to private developers was being discussed with City personnel and not a single email or other correspondence and not a single note taken during a meeting was generated—internally nor from or to any outside party, like Suttle or Decker Lake Golf—for the 7 months these quiet meetings were going on. Or, the City has refused to disclose those records.

Rodgers' April 13th Request for Records About PIR Processing of his Prior Requests

10. a. The City Law Department, open records section, has an automated system for logging, referring, and tracking open records requests. Frustrated that the City was not being responsive or timely to his TPIA requests, on April 13, 2015, Rodgers asked for the open records section's log information about his previously filed requests. EXHIBITS P-2, P-3, and P-4 (first pages). These records should show to whom (which City personnel and departments) the records requests were routed, when that routing occurred, and what response the central open records section received. For example, knowing that ACM Sue Edwards was very much involved in the genesis of the scheme to give up the Walter E. Long parkland and the failure to acquire the Bull Creek property, but not a single piece of correspondence from or to her and Decker Lake Golf or TxDOT was disclosed, Rodgers wondered if she had even been sent the open records requests by the Law Department. The PIR processing records would show whether some City staff with relevant records just weren't made aware of the Rodgers requests.

b. Ironically, to this day, the City has failed to produce the PIR processing system records and correspondence requested by EXHIBITS P-3 (Bull Creek) and P-4 (Genesis of Decker

Lack Golf scheme). The City produced the records for EXHIBIT P-2 (which is attached as EXHIBIT P-5, second page) which proves that such records exist but have been withheld by the City for some reason.

Unexplained, Unjustified Delay Notices from the City

11. a. Several times, the City staff—often long after 10 business days of receiving the requests—would, out of the blue, send a notice that the response would be delayed. TPIA section 552.221(c) and (d) do permit, under certain circumstances, the officer for public information to send the requestor notice of a delay. Not one of the notices the City staff sent, explained why the delay was occurring or why, sometimes *weeks* after receiving the records request, the delay notice was being sent.

b. On the morning of April 23, 2015, Law Department employee Lyn von Roeder sent an email, apparently applying to all of Rodgers' outstanding open records requests going back to the March 16th requests, saying that the City "will make the effort to ensure that the information you requested is made available to you in a timely manner. We anticipate completing your requests on or before May 11, 2015." No explanation was given as to why almost a 60-day delay was occurring in providing the information "timely." Ms. Von Roeder did not respond to an email that same day from Rodgers' attorney inquiring as to why the notice was being sent.

c. On the afternoon of April 23, 2015 Eloy Del Bosque (identified as "PIR Team, Law Department") send 3 emails responding to Rodgers' April 13th request for the PIR processing records. Instead of providing the records Rodgers requested—as the TPIA requires—he instead provide made-up information about department responses to the prior requests. And, apparently referring the PIR processing log records from his own office, Del Bosque said, "We anticipate having any additional responsive information to you on or before May 11, 2015."

12. The City did not provide the requested records by or after May 11, 2015.

Unauthorized, Unexplained Redactions of Records Provided

13. a. The City did not obtain authorization from the Texas Attorney General to withhold or redact any of the records responsive to the Rodgers' request. But the City redacted entire emails. When Rodgers' attorney pointed out the redactions and requested an explanation for why the redactions were made, the City did not respond.

b. EXHIBIT P-6 is an example of a complete email redaction, without explanation, related to Rodgers' request for the genesis of the Decker Lake Golf scheme.

c. EXHIBIT P-7 is an example of complete redactions, without explanation, related to Rodgers' request for records related to the City's failure to acquire the Bull Creek parkland.

The City Ignored Warnings of this Lawsuit

14. a. At one point, the City filed, but withdrew, a request to the Attorney General for ruling about whether the contract negotiation records and the Bull Creek fiasco could be withheld. On March 31, 2015, Rodgers' attorney emailed Catherine Riley in the Law Department noting that no records had been disclosed and specifically asked if the City was refusing to disclose "any" of the records.

b. After still not receiving the requested records, on April 7, 2015, Rodgers' attorney emailed Asst. City Attorney Elaine Nicholson specifically warning that a lawsuit was going to filed. Rodgers concern was that the Decker Lake Golf scheme was proceeding through the City Council's decision process while the City staff was withholding relevant records.

c. On April 13, 2015, Rodgers' attorney send Catherine Riley of the Law Department noting that additional records Purchasing employee Terry Nicholson had had still not been disclosed (including the records related to the strange gap in emails with Decker Lake Golf in

August to October, 2014).

d. On April 15, 2015, Rodgers' attorney sent Catherine Riley another email pointing out problems with the City's response to the Rodgers' open records request. The email said, "I'm trying very hard to muster the patience to wait and see if the Law Department can get the city management staff and whomever has control of the former Mayor and Council records to comply with the TPIA. But if the rest of the records are not forthcoming soon, I am left no choice but to seek assistance from the court to enforce Mr. Rodgers' rights under the TPIA."

e. On April 22, 2015, Rodgers' attorney wrote to Catherine Riley thanking her for a phone call in response to the April 15th email, but pointing out that responsive records still had not been received. The email said, "No offense, but there comes a point where we just give up on any expectation that leadership at the City is going to comply and instead seek help from the court."

f. On April 28, 2015, Rodgers' attorney wrote an email to city attorneys and open records staff, Eloy Del Bosque, Elaine Nichoson, Desta Walker, Carla Scales, and Catherine Riley noting that it had been over 40 days since Rodgers made his requests, and specifically noted that Del Bosque's office itself had not produced requested records about how his office processed the Rodgers request to which incomplete or no responses had been received. The email concluded, "What will it take—a lawsuit?—to get more serious attention to this failure to promptly comply with the Texas Public Information Act?"

15. Despite all of these warnings, Rodgers' waited until after May 11, 2015 (the date the City had said it would disclose all of the records) to see if the City would comply with the TPIA. On May 14, 2015, Rodgers' attorney sent an email detailing the deficiencies in the City's response to the Rodgers' requests for records and attaching another copy of all of the Rodgers request to which the City had not fully (or, on some, even partially) complied. EXHIBIT P-8. The email said, "No

further notice will be given to the City regarding this noncompliance with the TPIA before enforcement action is taken.” Now, almost a month after that “final” warning, Rodgers brings this lawsuit.

COUNT 1 – SUIT FOR MANDAMUS

16. The facts stated above are incorporated here as the basis for this cause of action for mandamus. Pursuant to the TPIA, Tex. Gov’t Code section 552.321, Plaintiff Rodgers brings this suit for mandamus against the City of Austin and asks the Court to order Defendant and its personnel to supply all of the information Rodgers requested in Exhibits P-1, P-2, P-3, and P-4 attached to this Petition.

CONDITIONS PRECEDENT

17. All conditions precedent to plaintiff’s claim for relief have been performed or have occurred.

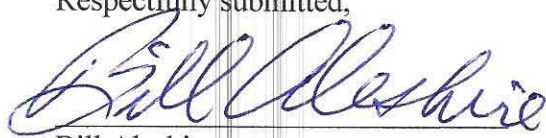
ATTORNEY FEES

18. Plaintiff has retained the under-signed attorney to bring this action. Plaintiff asks the court to award costs and reasonable and necessary attorney fees pursuant to TPIA section 552.323.

PRAYER

For these reasons, Plaintiff Brian Rodgers asks the Court to set this matter for an expedited hearing on mandamus pursuant to Tex. Gov’t Code section 552.321, and to order Defendant and its personnel to supply all of the information Rodgers requested in Exhibits P-1, P-2, P-3, and P-4 attached to this Petition. Plaintiff asks the Court to award Plaintiff costs and reasonable and necessary attorney fees, and to grant Plaintiff all other relief to which he may be entitled.

Respectfully submitted,

A handwritten signature in blue ink that reads "Bill Aleshire". The signature is fluid and cursive, with the first name "Bill" and last name "Aleshire" clearly distinguishable.

Bill Aleshire

Texas Bar No. 24031810

AleshireLAW, P.C.

700 Lavaca, Suite 1400

Austin, Texas 78701

Telephone: (512) 320-9155

Facsimile: (512) 320-9156

Bill@AleshireLaw.com

Bill Aleshire

From: Bill Aleshire <bill@aleshirelaw.com>
Sent: Thursday, April 23, 2015 12:35 PM
To: 'public.information@austintexas.gov'; 'Del Bosque, Eloy'; 'Elaine Nicholson'
Cc: 'Rodgers, Brian'
Subject: PIR - Correspondence Between Austin Officials and DAA Personnel
Attachments: PIR to COA 4-23-15.pdf

Please see the attached public information request from Brian Rodgers. We have constructed this request in such a way that, hopefully, will increase the speed and efficiency with which the City can search the email accounts of the former Mayor/Council and current City Managers and ACM's so a "prompt" response can be received.

Bill Aleshire

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Bill@AleshireLaw.com



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AUSTIN, TEXAS 78701

Bill Aleshire
Bill@AleshireLAW.com
512 320-9155 (call) 512 320-9156 (fax)

April 23, 2015

VIA EMAIL:

Officer for Public Information
City of Austin

RE: Public Information Request from Brian Rodgers – Correspondence Between DAA personnel and City personnel/officials.

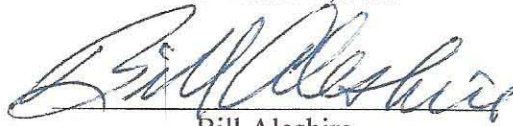
Dear Officer for Public Information:

This law firm represents Brian Rodgers who is the requestor for public information requested by this letter. The City of Austin is requested to promptly provide the following public information:

1. Regardless of whether using a City or personal email account, since September 1, 2013, all emails to or from (former) Mayor Leffingwell, (former) Council Member Cole or any other City Council member, or to or from the City Manager or any Assistant City Manager and the following persons or email addresses or domains:
 - a. (anyone) at "downtownaustin.com"
 - b. "jnias@jw.com"
 - c. (anyone) at "letsgoaustin.org"
 - d. Mrollins@austinchamber.com

We agree to pay the reasonable cost of efficiently providing this public information. See TPIA §§ 552.268, 552.269. If feasible, we request the information be provided on CD or thumb drive in Adobe Acrobat PDF format.

AleshireLAW, P.C.



Bill Aleshire

Cc: Brian Rodgers

Bill Aleshire

From: Bill Aleshire <bill@aleshirelaw.com>
Sent: Friday, April 24, 2015 12:11 PM
To: public.information@austintexas.gov; Del Bosque, Eloy; Elaine Nicholson
Cc: Rodgers, Brian
Subject: RE: PIR - Correspondence Between Austin Officials and DAA Personnel - Clarification
Attachments: PIR to COA 4-23-15.pdf

Please accept this clarification of the attached PIR submitted by email yesterday, April 23rd (see below). The time period cited in the request is for correspondence starts September 1, 2013, however, we did not intend to request correspondence after December 31, 2014, a 16-month period of time. In other words, this request is limited to correspondence that occurred on or after September 1, 2013 but that was prior to January 1, 2015.

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Austin, Texas 78701
512 320-9155 direct
512 750-5854 cell
512 320-9156 fax
Bill@AleshireLaw.com

From: Bill Aleshire [mailto:bill@aleshirelaw.com]
Sent: Thursday, April 23, 2015 12:35 PM
To: 'public.information@austintexas.gov'; 'Del Bosque, Eloy'; 'Elaine Nicholson'
Cc: 'Rodgers, Brian'
Subject: PIR - Correspondence Between Austin Officials and DAA Personnel

Please see the attached public information request from Brian Rodgers. We have constructed this request in such a way that, hopefully, will increase the speed and efficiency with which the City can search the email accounts of the former Mayor/Council and current City Managers and ACM's so a "prompt" response can be received.

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April 13, 2015

VIA EMAIL:

public.information@austintexas.gov

& Elaine Nicholson: Elaine.Nicholson@austintexas.gov

& Del Bosque, Eloy: eloy.delbosque@austintexas.gov

Public Information

City of Austin

RE: Public Information Request, PIR Processing Records, Rodgers PIR 3-16-15 Decker
Golf Contract Negotiation.

Dear City of Austin Officer for Public Information:

This public information request is made by our client, Brian Rodgers, via this law firm. Brian Rodgers is the requestor. On March 16, 2015, the attached public information request was received by the City of Austin regarding Decker Lake Golf contract negotiations. Mr. Rodgers requests the following information about how that request was processed by City personnel:

1. A copy of any record showing to which office(s) and City personnel Mr. Rodgers' request was transmitted for the purpose of determining whether such office(s) or personnel had responsive records.
2. A copy of any correspondence—other than correspondence protected by attorney-client privilege—the public information officer/designee sent or received to/from City personnel regarding the processing of Mr. Rodgers' request.

We agree to pay the reasonable cost of efficiently providing this public information. We request that the information be made available in PDF format and provided on a CD or thumb drive.

ALESHIRELAW, PC



Bill Aleshire

Cc: Client
ATTACHED – PIR 3/16/15 – Bull Creek



From: Bill Aleshire <bill@aleshirelaw.com>
Sent: Monday, March 16, 2015 2:48 PM
To: 'public.information@austintexas.gov'; 'Del Bosque, Eloy'
Cc: 'Rodgers, Brian'
Subject: PIR - Contract Negotiation Material - Decker Lake Golf LLC

TO: City of Austin Officer for Public Information:

This public information request is made by our client, Brian Rodgers, via this law firm. Brian Rodgers is the requestor. The information requested involves City of Austin negotiations with Decker Lake Golf LLC regarding the RFQS for golf courses on the Walter E. Long Park. Please promptly provide the following public information:

1. A copy of any correspondence (email or paper) between any official, employee, or attorney of the City of Austin and any officer, employee, or attorney of Decker Lake Golf LLC regarding proposed terms of a contract between the City of Austin and Decker Lake Golf LLC after Decker Lake Golf was selected as the party with whom to negotiate a contract.
2. A copy of each proposed version of contract language received or sent by the City of Austin from/to Decker Lake Golf LLC regarding a contract between the City and Decker Lake Golf.

We agree to pay the reasonable cost of efficiently providing this public information. We request that the information be made available in PDF format and provided on a CD or thumb drive.

[PLEASE NOTE BILL'S NEW FIRM & CONTACT INFORMATION]

Bill Aleshire

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April 13, 2015

VIA EMAIL:

public.information@austintexas.gov
& Elaine Nicholson: Elaine.Nicholson@austintexas.gov
& Del Bosque, Eloy: eloy.delbosque@austintexas.gov
Public Information
City of Austin

RE: Public Information Request, PIR Processing Records, Bull Creek Property

Dear City of Austin Officer for Public Information:

This public information request is made by our client, Brian Rodgers, via this law firm. Brian Rodgers is the requestor. On March 16, 2015, the attached public information request was received by the City of Austin. Mr. Rodgers requests the following information about how that request was processed by City personnel:

1. A copy of any record showing to which office(s) and City personnel Mr. Rodgers' request was transmitted for the purpose of determining whether such office(s) or personnel had responsive records.
2. A copy of any correspondence—other than correspondence protected by attorney-client privilege—the public information officer/designee sent or received to/from City personnel regarding the processing of Mr. Rodgers' request.

We agree to pay the reasonable cost of efficiently providing this public information. We request that the information be made available in PDF format and provided on a CD or thumb drive.

ALESHIRELAW, PC

Bill Aleshire

Bill Aleshire

Cc: Client
ATTACHED – PIR 3/16/15 – Bull Creek



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512 320-9155 (call) 512 320-9156 (fax)

March 16, 2015

VIA EMAIL:

public.information@austintexas.gov

&

Del Bosque, Eloy: eloy.delbosque@austintexas.gov

Public Information

City of Austin

RE: Public Information Request, Bull Creek Surplus Property

Dear City of Austin Officer for Public Information:

This public information request is made by our client, Brian Rodgers, via this law firm. Brian Rodgers is the requestor. The information requested involves correspondence that may have occurred between staff or officials or TxDOT and the City of Austin regarding the sale by TxDOT last year of state land on Bull Creek Road in Austin Texas (see map below).



LINDA SCOTT / STAFF

⁺
Please promptly provide the following public information:

1. All correspondence or notices sent or received between any official, employee, or agent of

TxDOT and any official, employee, or agent of the City of Austin regarding the availability of, or potential sale of, the state land along Bull Creek Road identified in the map above.

We agree to pay the reasonable cost of efficiently providing this public information. We request that the information be made available in PDF format and provided on a CD or thumb drive.

ALESHIRELAW, PC



Bill Aleshire

Cc: Brian Rodgers

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April 13, 2015

VIA EMAIL:

public.information@austintexas.gov
& Elaine Nicholson: Elaine.Nicholson@austintexas.gov
& Del Bosque, Eloy: eloy.delbosque@austintexas.gov
Public Information
City of Austin

RE: Public Information Request, PIR Processing Records, Rodgers PIR 3-19-15 Pre-RFQS records for Long park golf proposal.

Dear City of Austin Officer for Public Information:

This public information request is made by our client, Brian Rodgers, via this law firm. Brian Rodgers is the requestor. On March 16, 2015, the attached public information request was received by the City of Austin regarding Pre-RFQS records for a golf proposal. Mr. Rodgers requests the following information about how that request was processed by City personnel:

1. A copy of any record showing to which office(s) and City personnel Mr. Rodgers' request was transmitted for the purpose of determining whether such office(s) or personnel had responsive records.
2. A copy of any correspondence—other than correspondence protected by attorney-client privilege—the public information officer/designee sent or received to/from City personnel regarding the processing of Mr. Rodgers' request.

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Cc: Client
ATTACHED – PIR 3/16/15 – Bull Creek



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March 19, 2015

VIA EMAIL:

public.information@austintexas.gov

& Elaine Nicholson: Elaine.Nicholson@austintexas.gov

& Del Bosque, Eloy: eloy.delbosque@austintexas.gov

Public Information

City of Austin

RE: Public Information Request, Licensing Walter E. Long Park for golf courses

Dear City of Austin Officer for Public Information:

This public information request is made by our client, Brian Rodgers, via this law firm. Brian Rodgers is the requestor. This is a supplemental request to the request by Mr. Rodgers by email on March 16th regarding negotiations regarding the terms of the proposed "license" agreement with Decker Golf LLC.

Background Related to this Request

The information requested in this supplemental request involves correspondence that occurred prior to the City's formal release of an RFQS for use of Walter E. Long parkland for purposes including golf courses. According to an article in the Austin American Statesman of this date (page A8):

"Parks department officials confirmed that the proposal [for a license for golf courses on the parkland] was brought to the city by the developer."

This history was confirmed by Parks Director Hensley, who is quoted as saying regarding whether to "lease" or "license" the parkland: "[] at the time when this came forward, the decision was to look at a license agreement.".... "I'll be real frank. This idea came forward to us..."

But the City staff has not voluntarily published or disclosed records related to the genesis of the current proposal to use the Long parkland for privately operated golf courses or the related issue of whether to do so with a lease requiring voter approval or try to skirt that requirement with a "license." This supplement request is intended to, and should be interpreted in the context of an effort to, require the full disclosure of that public information about the history of this current proposal.

This "decision" occurred during the previous Mayor's term of office, and we would not be surprised if former Mayor Leffingwell had external and internal correspondence regarding the golf-course license idea prior to the issuance of the RFQS. Without limiting the scope of the request, this request also seeks such correspondence to or from former Mayor Leffingwell regardless of whether Mayor Leffingwell used a city or personal email account for such correspondence. *See* Tex. Loc. Gov't Code sections 201.006; 202.007; 202.008, 202.009(b) (Upon leaving office, the custodian of such City records is required to deliver to his successor "all local government records in custody," and these statutes provide civil and criminal liability for failing to do so).

Please promptly provide the following public information:

1. All correspondence (of any kind), meeting notes or recordings, which occurred prior to the issuance of the Walter E. Long RFQS for golf course use of the parkland, concerning any proposal, idea, suggestion, or inquiry to use the Long park for golf course purposes.
 - a. This request includes, but is not limited to, any record of correspondence or meetings, which occurred prior to the issuance of the Walter E. Long RFQS, between anyone in the City of Austin Law Department and any person who is not a City official, employee, or client of the Law Department regarding potential use of Long parkland for golf courses.
 - b. This request includes, but is not limited to, any record of correspondence or meetings, which occurred prior to the issuance of the Walter E. Long RFQS, between anyone in the City of Austin Parks Department, the City Manager's Office, or the Mayor or Council offices, and any person who is not a City official or employee regarding potential use of Long parkland for golf courses.
 - c. This request includes, but is not limited to, any record of correspondence or meetings, which occurred prior to the issuance of the Walter E. Long RFQS, between City of Austin officials or employees and anyone in the City of Austin Parks Department regarding potential use of Long parkland for golf courses. This does not include correspondence that is subject to attorney-client communication privilege.

We agree to pay the reasonable cost of efficiently providing this public information. We request that the information be made available in PDF format and provided on a CD or thumb drive.

ALESHIRELAW, PC



Bill Aleshire

Cc: Brian Rodgers

Bill Aleshire

From: Walker, Desta <desta.walker@austintexas.gov>
Sent: Monday, May 18, 2015 3:27 PM
To: Bill@AleshireLaw.com
Cc: Del Bosque, Eloy; Walker, Desta
Subject: Public Information Request - PIR Processing Records - PIR # 808377
Attachments: 5182015_20935PM_808377BAleshire PIR to COA 4-13-15 - PIR Processing Rodgers 3-16-15 negotiation records.pdf; 5182015_21030PM_PIR 808377 _Aleshire, BILL_ PARD Responsive.pdf; PIR # 808377.pdf

Mr. Aleshire,

I have attached responsive information for your request along with your original request.

This request was assigned to the following Departments and Offices:

Law Department – No Responsive information
Public Information Team – Responsive information - Attached
Parks & Recreation Department – Responsive information - Attached
Purchasing Department – Responsive information – Purchasing prepared a CD for Mr. Aleshire to pick-up on April 27, 2014

If you have any questions please contact Eloy Del Bosque at (512) 974-1338 or Eloy.delbosque@austintexas.gov


Thank you,


Desta Walker
LAW Department
City of Austin
(512) 974-6480
Desta.walker@austintexas.gov





PIR # 808377


Desta Walker - PIR 03/18/2015 05:56 PM Please upload your comments to the parent WF # 806377


 Desta Walker - PIR 03/18/2015 05:56 PM FSD - Purchasing, PARD and LAW have been added to this PIR.


 Desta Walker - PIR 03/18/2015 05:56 PM Please advise if other departments should be added to this PIR.


 Ashley Sherwood - FSD-PUR 03/27/2015 11:26 AM I am working with Terry Nicholson and Sandy Brandt to get this information for the requester. It is all going to need to be sent to the Attorney General's Office for a determination. Please send any responsive information to me, so that we may put it all together to send to AG.

 Catherine Riley - LAW 03/30/2015 03:41 PM Sent AG short letter


 Ashley Sherwood - FSD-PUR 03/31/2015 09:08 AM Terry Nicholson is handling this request. The responsive info has been sent to Law for an AG determination.

 Lyn von Roeder - PIR 03/31/2015 10:53 AM Changed due date to 5/29 - AG opinion requested.

 Catherine Riley - LAW 04/06/2015 04:28 PM Sent AG long letter

 Catherine Riley - LAW 04/06/2015 04:43 PM 4/3/15- released some info to requestor

 Catherine Riley - LAW 04/07/2015 04:09 PM Withdrew request for AG decision. Released material to requestor.

 Ashley Sherwood - FSD-PUR 04/08/2015 09:43 AM Responsive information has been released via email as well as mailed on CD to Mr. Aleshire.

 Nanci Nicholas - PARD 04/14/2015 02:04 PM Its not clear to me if someone released PARD's submittal to this PIR. Please advise so I can close out my Child PIR ?

 Eloy Del Bosque - PIR 05/08/2015 03:10 PM Responsive information sent to requestor by Purchasing (includes PARD) and law. Closing pir.

Bill Aleshire

From: Bill Aleshire <bill@aleshirelaw.com>
Sent: Monday, May 18, 2015 1:40 PM
To: Walker, Desta; Del Bosque, Eloy; Elaine Nicholson; Riley, Catherine
Cc: Rodgers, Brian
Subject: FW: Pubic Information Request - Information prior to issuance of Walter E. Long RFQs - PIR # 806599
Attachments: 091914 Memo to MC re Walter E Long Metro Park RFQS Revised Schedule.pdf; 5142015_50255PM_DOC15032315_31_26.pdf; 5142015_50334PM_PIR 806599 _HensleyCalendar_PARDresponsive.pdf; 5152015_24404PM_PIR 806599 Responsive Information_SEdwards_Redacted.pdf; FW_ Memo to Mayor & Council from Austin Parks and Recreation Director Sara L. Hensley, re_ Walter E. Long Metropolitan Park - RFQS.pdf; FW_ Walter E. Long--RFQ_Redacted.pdf; PIR#806599 BAleshire 3.19.15 to COA 3-18-15 - Genesis of License Idea (2).pdf; RE: Walter E. Long RFQ (5.09 KB); RE_ Walter E. Long--RFQ_Redacted.pdf; Walter E. Long RFQ (3.71 KB)

Importance: High

Ms. Walker, there is an email included in several of the attachments (apparently the same email in each) that is completely redacted (the header, the text, and salutation). The City did not request an attorney general ruling regarding the attached information. Please explain what legal basis there is for the redaction.

Bill Aleshire

AleshireLAW PC
700 Lavaca, Suite 1400
Austin, Texas 78701
512 320-9155 direct
512 750-5854 cell
512 320-9156 fax
Bill@AleshireLaw.com



Edwards, Sue

From: Edwards, Sue
Sent: Thursday, April 03, 2014 10:36 AM
To: Gomillion, Kevin
Cc: Hensley, Sara
Subject: RE: E_Walter_Long_Golf_Woodland Preserves.pdf
Attachments: Section 0500 Walter Long_Golf (v8_4_3).docx

Kevin,

I have some minor questions and have attached them as comments through the document.

Sue

Sue Edwards
Assistant City Manager
City of Austin
301 W 2nd Street
Austin, TX 78701
512.974.7820
sue.edwards@austintexas.gov

-----Original Message-----

From: [REDACTED]
Sent: [REDACTED]
To: [REDACTED]
Subject: [REDACTED]

[REDACTED]

[REDACTED]

Bill Aleshire

From: Bill Aleshire <bill@aleshirelaw.com>
Sent: Monday, May 18, 2015 2:18 PM
To: Del Bosque, Eloy; Del Bosque, Eloy; Elaine Nicholson; Riley, Catherine
Cc: Rodgers, Brian
Subject: FW: Public Information Request - Bull Creek Surplus Property - PIR # 806282
Attachments: MessageAttachments.zip

Importance: High

Ms. Walker, in the 5th attachment to this set regarding the Bull Creek property, there are several emails that are completely redacted (starting at pdf page 22 of the attachment). The City requested an AG ruling on this request, but the document the City submitted to the AG was apparently not the emails that are redacted in this package because the AG determined that the document submitted was not within the scope of the PIR. Therefore, please explain the legal basis for the redaction of the attached documents.

Bill Aleshire

AleshireLAW PC
700 Lavaca, Suite 1400
Austin, Texas 78701
512 320-9155 direct
512 750-5854 cell
512 320-9156 fax
Bill@AleshireLaw.com



Martinez, Rose Marie

From:

Sent:

To:

Cc:

Subject:

Importance:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Martinez, Rose Marie

From:

Sent:

To:

Cc:

Subject:

Attachments:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From:

Sent:

To:

Cc:

Subject:

Importance:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Martinez, Rose Marie

From: [REDACTED]

Sent: [REDACTED]

To: [REDACTED]
[REDACTED]

Cc: [REDACTED]

Subject: [REDACTED]

Attachments: [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]

Date: [REDACTED]

To: [REDACTED]
[REDACTED]

Subject: FW: [REDACTED]

From: Jess Berglund [<mailto:Jess.Berglund@txdot.gov>]

Sent: Monday, September 08, 2014 8:59 AM

To: Plummer, Junie

Subject: Bull Creek

Good Morning Junie,

I spoke with Roland Tilden earlier this morning and he relayed to me that he did receive your message and I am replying on his behalf and also following up on our conversation from yesterday..

We have spoken briefly about the need for a leaseback of part of the Bull Creek property to accommodate State agency employees until they can be transitioned. A lease will be needed on the following terms:

Lease of up to 3 years as the property is needed by either TxDOT or the Texas Department of Motor Vehicles.

\$1/ yr lease

Triple Net lease – taxes & insurance provided by lessee(state), lessor(city) provides maintenance

The land to be covered by the lease will be the area currently in use – outlined by the attached documents.

Martinez, Rose Marie

From:

Sent:

To:

Cc:

Subject:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Hart, Elaine

Sent: Tuesday, September 23, 2014 12:25 PM

To: Ott, Marc

Cc: Edwards, Sue; Snipes, Anthony

Subject: Council Member Morrison Meeting re Bull Creek Property

FOR INFORMATION

Marc,

Bill Aleshire

From: Bill Aleshire <bill@aleshirelaw.com>
Sent: Thursday, May 14, 2015 3:10 PM
To: 'Nicholas, Nanci'; 'Riley, Catherine'; 'Elaine Nicholson'; 'Del Bosque, Eloy'; 'Walker, Desta'
Cc: 'Rodgers, Brian'
Subject: City's Lack of Compliance with TPIA
Attachments: PIR to COA 4-23-15.pdf; PIR to COA 4-13-15 - PIR Processing Rodgers 3-16-15 negotiation records.docx; PIR to COA 4-13-15 - PIR Processing Rodgers 3-16-15 pre-RFQS.docx; PIR to COA 4-13-15 - PIR Processing.pdf; PIR to COA 3-18-15 - Genesis of License Idea.pdf; Incomplete Respponse Pre-RFQS -FW PIR 806599 Bill Aleshire_ Walter E. Long.htm; Incomplete Response - Gap in correspondence - Contract Negotiation.htm

Importance: High

Ms. Nicholas, you sent the email below to my old email address, but it was forwarded. Please note my new contact information.

I do not know which of Mr. Rodger's PIRs you intended your email below to respond to.

Attached are PIRs from Brian Rodgers to which the City has not provided *any* of the requested records since the PIR was filed on the dates noted:

1. April 23, 2015: Email correspondence with the Downtown Austin Alliance
2. April 13, 2015: Records from the City's PIR tracking system (and related correspondence) to show to whom Mr. Rodger's PIR 3/16/15 (Decker Golf negotiation records) was sent for response.
3. April 13, 2015: Records from the City's PIR tracking system (and related correspondence) to show to whom Mr. Rodger's PIR 3/19/15 (Pre-RFQS discussions with Decker Golf) was sent for response.
4. April 13, 2015: Records from the City's PIR tracking system (and related correspondence) to show to whom Mr. Rodger's PIR 3/16/15 (Correspondence between TxDOT & City regarding Bull Creek property) was sent for response.

Attached are PIRs from Brian Rodgers to which the City has not provided a complete response to his request, despite sending us notice that the remaining records would be provided by May 11, 2015:

5. March 19, 2015: Correspondence and records between agents of Decker Golf and City personnel prior to issuance of the RFQS for the Walter Long golf proposal. The only response we have received was (a) from PARD, copies of meeting calendars, and (b) a notice that the remaining records would be provided by May 11, 2015 (also attached). The calendar records showed meetings set up by ACM Sue Edwards with Decker Lake (unregistered) lobbyist Richard Suttle, but no correspondence from or to Mr. Suttle or Decker Lake officials has been provided for the time period prior to issuance of the RFQS. See attached email on April 8th pointing this out.
6. March 16, 2015: Correspondence about Decker Golf contract negotiations. We have repeatedly pointed out the very unlikely and suspicious gap in correspondence on the core contract provision (City Councils at-will cancellation of the contract without recourse) between Decker Golf and PARD/Purchasing personnel. See attached email on April 7th pointing this out.

No further notice will be given to the City regarding this noncompliance with the TPIA before enforcement action is taken.



Bill Aleshire

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512 320-9155 direct
512 750-5854 cell
512 320-9156 fax
Bill@AleshireLaw.com

From: Nicholas, Nanci [mailto:Nanci.Nicholas@austintexas.gov]
Sent: Thursday, May 14, 2015 2:23 PM
To: aleshire@r-alaw.com
Subject: PIR 808377_ Bill Aleshire_ PARD Responsive

Mr. Aleshire,

Came to my attention I had not forwarded you this responsive information.
This is in responsive to the PIR related to which city offices and personnel were assigned to respond to PIR # 806377 and the related correspondence.

Note the 2 PIR numbers are very similar. Just coincidence.

Sincerely,

Nanci Nicholas, Records Analyst
Office of the Director
Parks and Recreation Department
(512) 974-6719

Nanci.nicholas@austintexas.gov