

CAUSE NO. D-1-GN-13-003876

SAVE OUR SPRINGS ALLIANCE, INC.,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	53 <sup>RD</sup> JUDICIAL DISTRICT
	§	
GERALD DAUGHERTY	§	
In His Official Capacity as Travis	§	
County Commissioner for Precinct 3,	§	
Defendant.	§	TRAVIS COUNTY, TEXAS

**RESPONDENT’S RESPONSE TO PLAINTIFF SAVE OUR SPRINGS ALLIANCE INC.’S MOTION TO COMPEL**

COMES NOW, Respondent, the Honorable Gerald Daugherty, in his official capacity as Travis County Precinct Three Commissioner (hereinafter “Respondent” and/or “Daugherty”), by and through his undersigned attorneys of record, and hereby files Respondent’s Response to Plaintiff Save Our Springs Alliance Inc.’s Motion to Compel. In support thereof, Respondent would show as follows:

**I. Plaintiff’s Motion to Compel is Without Merit and Should Be Denied**

Plaintiff filed its Motion to Compel complaining of Respondent’s failure to: (a) produce without redactions certain emails where Assistant Travis County Attorney Tom Nuckols was the recipient or copied on the emails in question on grounds of assertion of the attorney client communications privilege pursuant to Section 552.107 of the Texas Public Information Act (“TPIA”); (b) produce a seven (7) page document entitled “Campo SH45 SW Progress Report” on grounds of assertion of the “agency memorandum exception pursuant to Section 552.111 of the TPIA<sup>1</sup>; and (c) produce without redactions portions of emails entitled “SH 45 SW

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<sup>1</sup> See *Plaintiff’s Motion to Compel* at 3-5.

Modeling Minutes Request,” on grounds of assertion of the “agency memorandum exception<sup>2</sup>.

Plaintiff’s Motion to Compel is baseless and without merit. First and foremost, all of the documents in question were submitted to the Office of the Attorney General (“OAG”) in unredacted format, and the redactions in question were reviewed and authorized by the OAG in its letter ruling pertaining to the May 10, 2013 Public Information Request (“PIR”) and Respondent’s request for a ruling in response to same.

Plaintiff’s arguments to this Court somehow suggesting that Respondent “has repeatedly and brazenly withheld information later determined to be responsive and unprivileged” is simply a blatantly false and misleading statement interjected solely for the purpose of attempting to bias or prejudice the Court. Other than Plaintiff’s bald-faced assertions, there has been no finding by a court or entity with jurisdiction over these matters that Respondent has withheld anything that he or his office was not entitled to withhold.

A. Emails Redacted Pursuant to Attorney Client Communications Privilege

In regards to the attorney client communications redacted emails, the only portion of the emails that have been redacted are the portions which reference specific legal advice that is being sought from, or provided to an agent of Travis County by Assistant County Attorney Nuckols in connection with his representation of Travis County as a client. For purposes of conferring on this Motion the undersigned counsel represented to Plaintiff’s counsel that he had reviewed the emails in question once again, and assured counsel that the redactions were limited to requests for a legal opinion, the providing of a legal opinion and/or the subject matter of the legal opinion requested. *See Exhibit 1*, 5/26/15 email from Tony Nelson to Bill Bunch, Subject: RE: conference on Motion to Compel. As stated in the 5/26/15 email,

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<sup>2</sup> *Id.* at 6.

unredacted copies of these emails cannot be produced to Plaintiff's counsel without waiving the attorney client communication privilege. *Id.* For this reason production of these emails under a protective order pursuant Section 552.322 of the TPIA is not applicable with respect to the production of these emails. Respondent is prepared, however to submit the emails in question to the Court for *in camera* inspection review in redacted and unredacted format pursuant to Section 552.3221 of the TPIA.

B. Documents Withheld or Redacted Pursuant to Agency Memorandum/Draft Exception

With respect to the seven (7) page document entitled "Campo SH45 SW Progress Report", by Plaintiff's own admission SOSA has received a five (5) page document entitled "Campo SH45 SW Progress Report" in response to the PIR request in this matter as well as in discovery in the lawsuit. The 7 page "Campo SH45 SW Progress Report" was submitted to the OAG, reviewed and authorized for withholding as a draft memorandum if the document was not produced as final draft. The 5 page "Campo SH45 SW Progress Report" is the final report, and all that Plaintiff is entitled to under the TPIA. The undersigned represents to the Court the remaining two pages consist of a draft schedule that is designated as "draft" on the face of the document, and a map. Respondent is prepared to submit the two excluded pages in question to the Court for *in camera* inspection review pursuant to Section 552.3221 of the TPIA.<sup>3</sup>

Lastly, with respect to the redacted portions of emails entitled "SH 45 SW Modeling Minutes Request," the redactions in question were submitted to the OAG in redacted and

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<sup>3</sup> It appears that the two disputed pages may have also been produced to Plaintiff in the course of discovery in the case. With respect to the map, due to the poor quality of the copy it is difficult to determine if it is the same identical map as the one that has been produced in this matter under a separate Document Bates Stamp Number.

unredacted format, reviewed and authorized for withholding as a draft memorandum that was part of the deliberative process. There has been no determination made by anyone other than Plaintiff that these documents are wrongfully redacted. In fact, quite the opposite - - the OAG authorized them to be redacted. Respondent is prepared to submit the emails in question to the Court for in camera inspection review pursuant to Section 552.3221 of the TPIA.

## **II. Conclusion**

WHEREFORE, PREMISES CONSIDERED, for the reasons stated herein, Commissioner Daugherty respectfully requests this Court deny Plaintiff's Motion to Compel. Commissioner Daugherty further prays that there be no production of the documents in question under a protective order pursuant to Section 552.322 of the TPIA, and further prays that production if any be limited to the Court only under seal for *in camera* inspection pursuant to Section 552.3221 of the TPIA, and for any such other and further relief to which he may be justly entitled.

Respectfully submitted,

DAVID A. ESCAMILLA  
County Attorney, Travis County  
P. O. Box 1748  
Austin, Texas 78767  
Telephone: (512) 854-9513  
Facsimile: (512) 854-4808

By: /s/ Anthony J. Nelson  
ANTHONY J. NELSON  
State Bar No. 14885800  
ANDREW M. WILLIAMS  
State Bar No. 24068345  
ATTORNEYS FOR TRAVIS COUNTY

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **Respondent's Response to Plaintiff Save Our Springs Alliance Inc.'s Motion to Compel** was served in accordance with the Texas Rules of Civil Procedure via electronic filing, electronic service and/or hand delivery on this 28<sup>th</sup> day of May, 2015, as follows:

**Via Electronic Filing**

Velva Price  
Travis County District Clerk  
1000 Guadalupe Street  
Austin, Texas 78701

**Via Electronic Service and Hand Delivery**

William G. Bunch  
Kelly Davis  
905 West Oltorf, Suite A  
Austin, Texas 78704

/s/ Anthony J. Nelson \_\_\_\_\_  
ANTHONY J. NELSON  
ANDREW M. WILLIAMS  
Assistant County Attorneys

## Tony Nelson

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**From:** Tony Nelson  
**Sent:** Friday, May 15, 2015 4:03 PM  
**To:** 'Bill Bunch'  
**Cc:** 'kelly'; 'Lauren Ice'; Amy Pollock; Andrew Williams; Tiffaney Gould; Tony Nelson  
**Subject:** RE: conference on Motion to Compel

**Importance:** High

Bill - I just left you a voice message on this matter. I have reviewed your motion as well as the redacted and unredacted versions of the documents in question. As I indicated in my voice message, after review, we stand by withholding/redaction of the documents in question (or portion of the documents) on the grounds asserted. As to the attorney client 552.107 assertions, I have reviewed each individual redaction, and while obviously I cannot reveal to you the content of the communications (without waiving the privilege) they each involve seeking or providing of legal advice. They are not just copying ACA Nuckols on non-legal issues/questions.

With respect to the Campo SH45 SW Progress Report, I am reviewing this document again to determine: (a) has the entire 7 page document been produced to SOS Alliance by Defendant at some other point in time, either in response to the subsequent PIA request, or in the course of discovery; (b) was this report released to SOS Alliance and/or the general public in final form. The AG approved withholding the memo as a draft if the memo was not to be release in final form. As you know and have identified in your draft motion, the 5 page report has been released to SOS Alliance on several occasions in response to the PIA and discovery in this case; (c) are the two pages that are not attached to the 5 page report releaseable? It appears that these two pages are the only differences in the report that was release and the draft that was not as sanctioned by the AG's Office after review of the documents submitted along with the request for an AG Opinion.

Also, I did want to make sure that you are aware that to my understanding all of the documents in question in your motion were submitted to the AG's Office in unredacted form, and the redactions at issue were approved and at the direction of the AG's Office in response to our office's request for an opinion. In light of these facts, are you still seeking to proceed with your Motion to Compel under Secs. 552.322 & 552.3221 of the TPIA? I would ask you to reconsider.

If you will not withdraw (or at least modify) the Motion, you may reflect Defendant as opposed, for the reasons stated in this email.

Please contact me to discuss.

Tony Nelson  
Assistant County Attorney  
Travis County Attorney's Office  
314 W. 11th Street, Suite 500  
P.O. Box 1748  
Austin, Texas 78767  
Phone: (512) 854-9513  
Fax: (512) 854-4808  
email: [tony.nelson@traviscountytx.gov](mailto:tony.nelson@traviscountytx.gov)

Please be advised of Travis County's new domain name and update your address book with the following email address:  
[tony.nelson@traviscountytx.gov](mailto:tony.nelson@traviscountytx.gov)

<b>EXHIBIT</b> <b>1</b>
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E-MAIL CONFIDENTIALITY NOTICE -

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

From: Bill Bunch [mailto:bill@sosalliance.org]

Sent: Thursday, May 14, 2015 4:19 PM

To: Tony Nelson

Cc: 'kelly'; 'Lauren Ice'

Subject: Re: conference on Motion to Compel

Sure; that works, bill

On 5/14/2015 4:01 PM, Tony Nelson wrote:

> Bill - I am re-sending because I did not receive a response. I am still working on another deadline and will not be able to address this today. Can we confer tomorrow so that I can give this a meaningful review?

>

> Tony Nelson

> Assistant County Attorney

> Travis County Attorney's Office

> 314 W. 11th Street, Suite 500

> P.O. Box 1748

> Austin, Texas 78767

> Phone: (512) 854-9513

> Fax: (512) 854-4808

> email: tony.nelson@traviscountytexas.gov

>

> Please be advised of Travis County's new domain name and update your address book with the following email address: tony.nelson@traviscountytexas.gov

>

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> Unauthorized interception of this e-mail is a violation of federal criminal law

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> -----Original Message-----

> From: Tony Nelson

> Sent: Thursday, May 14, 2015 2:14 PM

> To: 'Bill Bunch'

> Cc: 'kelly'; Lauren Ice

> Subject: RE: conference on Motion to Compel

>

> Bill - I am working on another deadline for today. I do not have time to review your motion and its contentions. Can you wait until tomorrow on this to allow me time to review and provide a meaningful response.

>

> Let me know.

>

> Tony Nelson

> Assistant County Attorney  
> Travis County Attorney's Office  
> 314 W. 11th Street, Suite 500  
> P.O. Box 1748  
> Austin, Texas 78767  
> Phone: (512) 854-9513  
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Unauthorized interception of this e-mail is a violation of federal criminal law

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>  
> -----Original Message-----

> From: Bill Bunch [mailto:bill@sosalliance.org]

> Sent: Thursday, May 14, 2015 2:08 PM

> To: Tony Nelson

> Cc: 'kelly'; Lauren Ice

> Subject: conference on Motion to Compel

>  
>  
> Tony,

> As previously stated to you, we are about ready to file the attached Motion to Compel under the PIA provisions and have it set with the Plea to the Jurisdiction and MPSJ. I assume you will oppose, but wanted to confer. Perhaps there are some of these that you would release.

>  
> Let us know and thanks,

>  
> Bill

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	§	
Plaintiff,	§	
	§	
v.	§	53 <sup>RD</sup> JUDICIAL DISTRICT
	§	
GERALD DAUGHERTY	§	
In His Official Capacity as Travis	§	
County Commissioner for Precinct 3,	§	
Defendant.	§	TRAVIS COUNTY, TEXAS

**ORDER DENYING SAVE OUR SPRINGS ALLIANCE INC.’S  
MOTION TO COMPEL**

Came on this day to be heard the Plaintiff Save Our Springs Alliance Inc.’s Motion to Compel and after considering the pleadings, the motion, evidence, and arguments of counsel for the Plaintiff, and counsel for Respondent, Daugherty, this Court DENIES Save Our Springs Alliance Inc.’s Motion to Compel. Therefore, it is ORDERED, ADJUDGED AND DECREED that Save Our Springs Alliance Inc.’s Motion to Compel is DENIED.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
PRESIDING JUDGE