

CAUSE NO. D-1-GN-15-001031

TEXAS DISPOSAL SYSTEMS, INC.,
And JENNIFER THOMAS
Plaintiffs,

§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY, TEXAS

CITY OF AUSTIN, TEXAS
Defendant.

419TH JUDICIAL DISTRICT

**DEFENDANT’S ORIGINAL ANSWER, AFFIRMATIVE DEFENSES,
SPECIAL EXCEPTIONS & REQUESTS FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant, City of Austin, Texas and files this Original Answer, Affirmative Defenses, Special Exceptions, and Requests for Disclosure in response to Plaintiffs’ Original Petition and respectfully shows the Court the following:

I. GENERAL DENIAL

1. Pursuant to Texas Rule of Civil Procedure 92, Defendant generally denies the material allegations of Plaintiffs’ Original Petition, demands proof thereof, as required by the Texas Rules of Civil Procedure, and reserves the right to plead further and in greater particularity as the case progresses should such be indicated.

II. AFFIRMATIVE DEFENSES

2. Pursuant to Texas Rule of Civil Procedure 94, Defendant asserts the following affirmative defenses:

- a. Official immunity; and
- b. Governmental Immunity.

III. SPECIAL EXCEPTIONS

3. Defendant specially excepts to Paragraphs 28 through 33, wherein Plaintiffs attempt to

bring a declaratory judgment cause of action pursuant to Texas Government Code §552.3215. Section 552.3215 does not authorize a declaratory judgment action by complainants against governmental entities. Suits for declaratory judgment under the Texas Public Information Act may only be filed by the district attorney, county attorney, or attorney general. TEX. GOV'T CODE §552.3215(c),(d),(e),&(i).

4. Defendant specially excepts to Plaintiffs' request for attorney fees. Pursuant to section 552.323(a) of the Texas Government Code, a court may not assess attorney fees or costs against a governmental body that is acting in reliance upon a written decision of the attorney general. That is exactly what has occurred here – Plaintiffs are seeking to overturn the Attorney General's decision which concluded that certain documents were exempt from disclosure under the Public information Act. See Plaintiffs' Original Petition at ¶23 & Exhibit F to Plaintiffs' Original Petition.

5. Defendant requests that Plaintiffs re-plead within thirty (30) days or that their pleadings be stricken.

IV. REQUESTS FOR DISCLOSURE

6. Under Texas Rules of Civil Procedure 194 and 190.2(b)(6), Defendant requests that the Plaintiffs disclose, within thirty days of the service of this request, the information or material described in Rule 194.2 and all documents, electronic information, and tangible items that the Plaintiffs have in their possession, custody, or control and may use to support their claims or defenses pursuant to TRCP 190.2(b)(6).

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, City of Austin, Texas prays that all relief requested by Plaintiffs be denied; that Defendant recover its costs and any such other and further

relief, general and specific, at law and in equity, to which it may show itself to be justly entitled. Defendant further requests that the Court grant its special exceptions and require Plaintiffs to replead within thirty (30) days or that their pleadings be stricken.

RESPECTFULLY SUBMITTED,

KAREN M. KENNARD, CITY ATTORNEY
MEGHAN L. RILEY, CHIEF LITIGATION

/s/ Meitra Farhadi
MEITRA FARHADI
SBN 24036547
Assistant City Attorney
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-2310
Facsimile: (512) 974-1311
meitra.farhadi@austintexas.gov

ATTORNEYS FOR DEFENDANT

Unofficial copy - Travis Co. District Clerk Yelva L. Price

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties, or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, on this the 20th day of April, 2015, as follows:

Via e-Service and/or facsimile to:

James A. Hemphill
SBN 00787674
GRAVES, DOUGHERTY, HEARON & MOODY, P.C.
401 Congress Avenue, Suite 2200
Austin, Texas 78701
Telephone: (512) 480-5762
Facsimile: (512) 536-9907
jhemphill@gdhm.com

/s/ Meitra Farhadi
MEITRA FARHADI

Unofficial copy - Travis Co. District Clerk Velda L. Price