

No. 07-18-00225-CV

**In the Court of Appeals for the
Seventh Judicial District**

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Texas Tech University,
Appellant,

v.

Dolcefino Communications, LLC dba
Dolecefino Consulting,
Appellee.

On Appeal from the 99th Judicial District Court of Lubbock County,
Texas, Honorable Judge William C. Sowder Presiding

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ORAL ARGUMENT REQUESTED

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STATEMENT OF THE CASE

Nature of the Case:

This is a Public Information Act Mandamus Proceeding. Plaintiff Dolcefino filed a mandamus proceeding pursuant to Texas Government Code, Section 552.321 along with relief sought under the Uniform Declaratory Act and ultra vires. (CR. 212).

Course of Proceedings:

Plaintiff filed his Original Petition on January 8, 2018. (CR. 5). On February 9, 2018, Defendants filed their Original Answer with Affirmative Defenses and Plea to the Jurisdiction. (CR. 26). On April 13, 2018, Defendants filed their First Amended Plea to the Jurisdiction (CR. 51). On April 24, 2018, Dolcefino filed his First Amended Petition. (CR. 185). On April 25, 2018, Plaintiff filed his second amended petition (CR. 212). On April 30, 2018, Defendants filed their Supplemental Plea to the Jurisdiction (CR. 281). On April 30, 2018, Defendants filed their Second Amended Plea to the Jurisdiction. (CR. 307).

Trial Court's Disposition:

On June 7, 2018, the trial court granted in part and denied in part Defendants' Second Amended Plea to the Jurisdiction. (CR.469).

STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully requests that the Court grant oral argument in this matter, as the issues in this case are complex and of significant import to the State. Further, Appellant believes that argument will assist the Court in evaluating the issues raised in this appeal.

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On Appeal from the 99th Judicial District Court of Lubbock County,
Texas, Honorable Judge William C. Sowder Presiding

APPELLANT'S BRIEF

To the Honorable Justices of the Seventh Court of Appeals:

Appellant Texas Tech University, files its brief and respectfully shows the Court the following reasons it should reverse the lower court's partial denial of Appellants' Second Amended Plea to the Jurisdiction and render an order reversing the trial court on the grounds below.

ISSUES PRESENTED

I. THE TRIAL COURT ERRED IN DENYING APPELLANT’S SECOND AMENDED PLEA TO THE JURISDICTION BECAUSE THE NON-EXISTENCE OF PUBLIC INFORMATION IS NOT A REFUSAL TO PRODUCE PUBLIC INFORMATION AND ONCE A REQUEST IS WITHDRAWN BY OPERATION OF LAW, THERE IS NO REQUEST TO ADJUDICATE.

1. The trial court erred in deciding that TTU’s lack of existing public information amounted to a refusal to produce public information.
2. Appellee’s Failure to Either Pay TTU’s Statutory Cost Estimate or Appellee’s Failure to Properly Object to TTU’s Cost Estimate, results in the Request being Withdrawn by Operation of Law; Therefore, Eliminating the Trial Court’s Subject Matter Jurisdiction.

STATEMENT OF FACTS

This is an interlocutory appeal from the partial denial of TTU’s Second Amended Plea to the Jurisdiction pertaining to Dolcefino’s mandamus proceeding pursuant to several Texas Public Information Act (“PIA”) (Chapter 552 of the Texas Government Code) requests. (CR. 461; 469).

In its plea, Appellants challenged the trial court’s jurisdiction over two points. First, TTU challenges the trial court’s jurisdiction because it determined that the lack of existing responsive documents amounted to a refusal to produce responsive documents. (CR. 307; 469). Also,

Appellants challenged the trial court's jurisdiction regarding Appellee's requests that were withdrawn by operation of law. (CR. 307; 469).

Under the PIA, After a request is properly made, the governmental body is statutorily required to submit a cost estimate if the charges will exceed \$40. TEX. GOV'T CODE § 552.2615(a). If the requestor does not respond to the cost estimate within 10 business days, then the request is statutorily withdrawn. TEX. GOV'T CODE § 552.2615(b). TTU issued cost estimates to Dolcefino. (CR. 307). Dolcefino failed to pay several cost estimates. *Id.* Dolcefino failed to properly object to those cost estimates. *Id.*

Specifically, Appellee asserted claims with respect to eighteen separate requests for information under the Public Information Act. Thirteen of those requests were withdrawn by operation of law because, as explained below, Appellee failed to comply with Section 552.2615 of the PIA (“the request is considered automatically withdrawn if the requestor does not respond. . . .”). In addition, three of the requests were for information that does not exist as requested. Accordingly, these claims cannot be the basis for any claims—under the PIA.

Lack of public information is not refusal.

As stated above, for three of Appellee's requests at issue on appeal, TTU did not have any information responsive to the request. Those are as follows:

On October 9, 2017, Dolcefino sent a PIA request to TTU seeking "any completed investigation into the alleged mistreatment of Adam Jones by Mike Leach" (Emphasis added). (CR. 350). On October 23, 2017 TTU responded to Dolcefino via email that "Texas Tech University does not have any documents regarding any alleged mistreatment of anyone by the name of 'Adam Jones.' If you are referring to the incident that eventually led to Coach Leach's termination, then I assume you are referring to the mistreatment of 'Adam James.' However, TTU does not have a completed investigation report regarding Leach's mistreatment of Adam James as the completion of the report was interrupted by the litigation ensuing upon Coach Leach's termination."¹ (CR. 351-352).

¹ TTU understood this request to be for a final investigative report, not for all documents related to the investigation. TTU does not have a final investigative report, but an email containing the last working draft of what probably would have become or been incorporated into the final investigative report was released to Dolcefino as part of the 482 pages released in response to Dolcefino's October 27, 2017 request for "copies of any documents and/or notes obtained or made during the investigation of the alleged mistreatment of Adam James by Mike Leach or any other allegation against Mike Leach."

Again, on October 11, 2017, Dolcefino sent a PIA request to TTU seeking “documents detailing the General Ledger Funds and Expenses of the Texas Tech Football Team between January 1, 2015, and the present.” (CR. 357). On October 25, 2017, TTU responded to Dolcefino that it did not have the information requested or the ability to create it. (“Texas Tech University does not have the ability to create a ‘General Ledger Funds and Expenses’ report specific to the Texas Tech Football Team as you have requested . . . nor do we have any such document.”). (CR. 358-360).

Finally, On November 30, 2017, Dolcefino sent a PIA request to TTU seeking “all publicly releasable documents including but not limited to any disciplinary action, internal investigation and or complaints filed against Kent Hance since January 1, 2014.” (CR. 432). On December 14, 2017, after a thorough search, TTU responded to Dolcefino via email that “Texas Tech University does not have any documents responsive to this request.” (CR. 433-434).

Requests withdrawn by operation of law.

Also at issue on appeal are requests that were withdrawn as a matter of law. Those requests are as follows:

On September 21, 2017, Appellee sent TTU nine requests in one day, then withdrew three of them, and now, five of the remaining six form part of the basis for Appellee's lawsuit. (CR. 332- 336). TTU sent Dolcefino a cost estimate for the September 21, 2017, request, as well as a revised estimate when the request was narrowed by Dolcefino. (CR. 337-339). The first estimate, for \$18,422.50, was sent by U.S. Certified Mail on October 5, 2017; the revised estimate, for \$4,666.00, was sent by U.S. Certified Mail on October 23, 2017. (CR. 340-342). Dolcefino responded to the first notice of the estimated charges by narrowing his request, but did not respond to the revised estimate.

The deadline for Dolcefino to do either was **ten business days** after October 23, 2017, when the cost statement was sent to him, though TTU allowed thirty business days due to vague data related statutes and an abundance of caution. Dolcefino did not accept or pay the charges, or file a complaint with the attorney general within even the more generous thirty business days TTU gave him. (CR. 340-342).

Next, on October 10, 2017, Dolcefino sent a PIA request to TTU seeking emails sent by Texas Tech University Board of Regents member L. Frederick Francis "which relate to University business." (CR. 353). On

October 24, 2017, TTU sent Dolcefino a cost estimate stating that the cost to retrieve and produce the requested information would be \$2,127.50, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the October 10, 2017, request is withdrawn. (CR. 354-356).

On October 12, 2017, Dolcefino sent a PIA request to TTU seeking all emails between January 1, 2016, and October 12, 2017, (1) from Texas Tech University Board of Regents member Tim Lancaster “which relate to University business,” and (2) between Chancellor Robert Duncan and Tim Lancaster. (CR. 372). On October 26, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce the requested information would be \$1,307.50, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the October 12, 2017, request is also withdrawn by statute. (CR. 373-375).

Next, on October 13, 2017, Dolcefino sent a PIA request to TTU

seeking all emails between January 1, 2016, and October 13, 2017, (1) from Texas Tech University Board of Regents member John Esparza “which relate to University business,” and (2) between Chancellor Robert Duncan and John Esparza. (CR. 376). On October 27, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce the requested information would be \$1,115.00, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the October 13, 2017, request is withdrawn. (CR. 377-379).

On October 16, 2017, Dolcefino sent a PIA request to TTU seeking all emails between January 1, 2016, and October 16, 2017, (1) from Texas Tech University Board of Regents member Mickey L. Long “which relate to University business,” and (2) between Chancellor Robert Duncan and Mickey L. Long. (CR. 380). On October 30, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce the requested information would be \$307.50, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his

request would be considered withdrawn. Dolcefino did neither, so the October 16, 2017, request is also withdrawn. (CR. 381-383).

Again, on October 17, 2017, Dolcefino sent a PIA request to TTU seeking all emails between January 1, 2016, and October 17, 2017, (1) from Texas Tech University Board of Regents member Ronnie Hammonds “which relate to University business,” and (2) between Chancellor Robert Duncan and Ronnie Hammonds. (CR. 384). On October 31, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce the requested information would be \$217.50, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the October 17, 2017, request is also statutorily withdrawn. (CR. 385-387).

On October 18, 2017, Dolcefino sent a PIA request to TTU seeking all emails between January 1, 2016, and October 18, 2017, (1) from Texas Tech University Board of Regents member Christopher M. Huckabee “which relate to University business,” and (2) between Chancellor Robert Duncan and Christopher M. Huckabee. (CR. 388). On November 1, 2017,

TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce the requested information would be \$3,080.00, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the October 18, 2017, request is also withdrawn. (CR. 389-391).

On October 19, 2017, Dolcefino sent a PIA request to TTU seeking all emails between January 1, 2016, and October 19, 2017, (1) from Texas Tech University Board of Regents member J. Michael Lewis “which relate to University business,” and (2) between Chancellor Robert Duncan and J. Michael Lewis. (CR. 392). On November 2, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce the requested information would be \$172.50. (CR. 393-395). TTU sent an amended cost estimate on November 6, 2017, stating that the cost would be \$472.50. Each cost notice stated that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the

October 19, 2017, request is statutorily withdrawn. (CR. 396-398).

On October 20, 2017, Dolcefino sent a PIA request to TTU seeking all emails between January 1, 2016, and October 20, 2017, (1) from Texas Tech University Board of Regents member John Steinmetz “which relate to University business,” and (2) between Chancellor Robert Duncan and John Steinmetz. (CR. 399-400). On November 3, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce the requested information would be \$2,970.00, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the October 20, 2017, request is, statutorily withdrawn. (CR. 401-403).

On October 23, 2017, Dolcefino sent a PIA request to TTU seeking all emails between January 1, 2016, and October 23, 2017, (1) from Texas Tech University Board of Regents member John Walker “which relate to University business,” and (2) between Chancellor Robert Duncan and John Walker. (Dolcefino’s petition mistakenly alleges that this request was dated October 22, 2017). (CR. 404). On November 6, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce

the requested information would be \$1,164.00, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the October 23, 2017, request is withdrawn. (CR. 405-407).

Finally, on October 25, 2017, Dolcefino sent a PIA request to TTU seeking all emails amid January 1, 2016, and October 25, 2017, between Chancellor Robert Duncan and L. Frederick Francis. (CR. 408). On November 8, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce the requested information would be \$127.50, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the October 25, 2017, request is also withdrawn. (CR. 409-410).

It is critically important that this Court know that the facts above are undisputed. In addition, if Dolcefino disagreed with the charges, the PIA provides a clear avenue to contest the charges through the Attorney General. TEX. GOV'T CODE § 552.269(a) and 70 Tex. Admin. Code § 70.8.

Dolcefino, did not properly contest the charges.

SUMMARY OF THE ARGUMENT

The trial court erred by denying TTU's second amended plea to the jurisdiction. Indeed, the trial court lacked subject matter jurisdiction to adjudicate Dolcefino's PIA mandamus for requests that were withdrawn by operation of law. Likewise, the trial court lacked jurisdiction for any requests where TTU lacked public information because they were not refusals to produce public information.

Dolcefino asserted claims with respect to eighteen separate requests for information under the Public Information Act ("PIA") (Chapter 552 of the Texas Government Code). Sixteen of those requests were withdrawn by operation of law because, as explained below, Dolcefino failed to comply with Section 552.2615(b) of the PIA ("the request is considered automatically withdrawn if the requestor does not respond. . . .") or the information does not exist as requested. Accordingly, these claims cannot be the basis for any mandamus claims—under the PIA; and, therefore, cannot serve as a basis for the trial court's jurisdiction in a PIA suit against TTU pursuant to TEX. GOV'T CODE §§ 552.321; 552.2615(b).

Texas Government Code section 552.321 states, “a requestor or the attorney general may file a suit for a writ of mandamus compelling a governmental body to make information available for public inspection if the governmental body *refuses* to request an attorney general’s opinion decision... or *refuses* to supply public information or information that the attorney general has determined is public information that is not excepted from disclosure...” TEX. GOV’T CODE § 552.321(a) (Emphases added). Section 552.002(a) of the PIA defines “public information” as “information that is collected, assembled, or maintained” by a governmental body. The Supreme Court of Texas in *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995), has interpreted this to mean that the Act compels disclosure of public information that is in existence but that the Act does not require a governmental entity to prepare or assemble new information in response to a request. Thus, TTU is not *refusing* to produce public information when there is no public information.

Therefore, the trial court order partially denying TTU’s Second Amended Plea to the Jurisdiction must be reversed.

ARGUMENT & AUTHORITIES

A. Standard of Review

The standard of review of an order granting a plea to the jurisdiction based on governmental immunity is *de novo*. *Tex. Natural Res. Conservation Comm'n. v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002); *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 928 (Tex. 1998), *cert. denied*, 526 U.S. 1144 (1999). It is the plaintiff's burden to allege facts that affirmatively establish the trial court's subject matter jurisdiction. *See Tex. Assn. of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993). In determining whether the plaintiff has met this burden, the court must accept the allegations in the plaintiff's pleadings as true and construe them in favor of the plaintiff. *See Tex. Dep't of Parks Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction should be granted without allowing the plaintiffs an opportunity to amend. *Id.* at 227; *Creedmoor-Maha Water Supply Corp. v. Tex. Com'n on Environmental Quality*, 307 S.W.3d 505, 513 (Tex. App.—Austin, 2010, no pet. h.).

B. THE TRIAL COURT ERRED IN DENYING APPELLANT’S SECOND AMENDED PLEA TO THE JURISDICTION BECAUSE THE NON-EXISTENCE OF PUBLIC INFORMATION IS NOT REFUSAL TO PRODUCE PUBLIC INFORMATION AND ONCE A REQUESTS IS WITHDRAWN BY OPERATION OF LAW, THERE IS NO REQUEST TO ADJUDICATE.

The Court’s jurisdiction over TTU in a PIA case requires that TTU refuse to supply public information in response to a request. At the very least there must be a “request” at the heart of a plaintiff’s PIA lawsuit. Requests withdrawn as a matter of law cannot serve as grounds for a court’s jurisdiction. Furthermore, requests that are withdrawn means Dolcefino is not a “requestor” with respect to it, thus, he lacks standing under TEX. GOV’T CODE § 552.321(a).

Sec. 552.321. SUIT FOR WRIT OF MANDAMUS.

- (a) A **requestor** or the attorney general may file suit for a writ of mandamus compelling a governmental body to make information available for public inspection **if the governmental body** refuses to request an attorney general's decision as provided by Subchapter G or **refuses to supply public information** or information that the attorney general has determined is public information that is not excepted from disclosure under Subchapter C.

TEX. GOV’T CODE § 552. 321(a). (Emphases added).

Standing is a prerequisite to subject-matter jurisdiction, and subject-matter jurisdiction is essential to a court's power to decide a case.

See Bland Indep. Sch. Dist. v. Blue, 34 S.W.3d 547, 553–54 (Tex. 2000). (“*Bland*”).

1. ***The trial court erred in deciding that TTU’s lack of existing public information amounted to a refusal to produce public information.***

At the trial court level, Appellant argued that the lack of public information did not amount to a refusal to produce public information. (CR. 307-434). However, the trial court disagreed. (CR. 21).

Section 552.002(a) of the PIA defines “public information” as “information that is collected, assembled, or maintained” by a governmental body. The Supreme Court of Texas in *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995), has interpreted this to mean that the Act compels disclosure of public information that is in existence but that the Act does not require a governmental entity to prepare or assemble new information in response to a request.

Thus, TTU is not *refusing* to produce public information to Dolcefino with respect to the October 9, 2017 (CR. 350), request—the information simply does not exist as he requested it. (CR. 351-352; 358-360). In fact, even if you read this request as broader than it actually is,

Dolcefino’s October 27, 2017² (CR. 411; CR. 412-414) request covers all of the documents responsive to this request, and TTU did not refuse to produce the information requested by Dolcefino’s October 27, 2017, request.³

Likewise, TTU is not *refusing* to produce public information to Dolcefino with respect to the October 11, 2017, request—the information simply does not exist and cannot be created in the requested format. (CR. 357; 358-360).

Finally, TTU is not *refusing* to produce public information to Dolcefino with respect to the November 30, 2017, request—the information simply does not exist. In fact, TTU found no evidence that any disciplinary action, internal investigation or complaints had ever been filed or even alleged against Mr. Hance. (CR. 432; 433-434).

Refusal by TTU to produce public information is a prerequisite to the Court’s jurisdiction over TTU in this PIA case. TEX. GOV’T CODE § 552.321(a). (“Where, as here, the plea to the jurisdiction challenges the existence of jurisdictional facts—i.e., whether the City ‘refuses to supply public information or information that the attorney general has

² Appellant does not contest this request here as Dolcefino paid the estimated and resulting fees. (CR. 323).

³ See footnote #1 above.

determined is public information,’ TEX. GOV’T CODE § 552.321—we consider evidence that the parties have submitted when necessary to resolve the jurisdictional issues raised.”) *City of El Paso v. Abbott*, 444 S.W.3d 315, 320 (Tex. App.—Austin 2014, pet. denied), citing *Bland*, 34 S.W.3d at 555.

Therefore, this Court lacks the jurisdiction necessary to consider Dolcefino’s claims against TTU with respect to the October 9, 11, and November 30, 2017, requests.

2. Appellee’s Failure to Pay TTU’s Statutory Cost Estimates and Appellee’s Failure to Properly Object to TTU’s Cost Estimates, Automatically Withdraws those Requests by Operation of Law; Therefore, Eliminating the Trial Court’s Subject Matter Jurisdiction.

Appellee’s requests were withdrawn by operation of law and cannot serve as a basis for the Court’s jurisdiction in a PIA suit against TTU.

TEX. GOV’T CODE §§ 552.321; 552.2615(b).

(b) A request described by Subsection (a) is considered to have been withdrawn by the requestor **if the requestor does not respond in writing to the itemized statement** by informing the governmental body **within 10 business days** after the date the statement is sent to the requestor that:

(1) the requestor will accept the estimated charges;

- (2) the requestor is modifying the request in response to the itemized statement; or
- (3) the requestor has sent to the attorney general a complaint alleging that the requestor has been overcharged for being provided with a copy of the public information.

TEX. GOV'T CODE § 552.2615(b) (emphasis added).

A “request described by Subsection (a)” means:

Sec. 552.2615. REQUIRED ITEMIZED ESTIMATE OF CHARGES.

- (a) If a request for a copy of public information will result in the imposition of a charge under this subchapter that exceeds \$40, or a request to inspect a paper record will result in the imposition of a charge under Section 552.271 that exceeds \$40, the governmental body shall provide the requestor with a written itemized statement that details all estimated charges that will be imposed, including any allowable charges for labor or personnel costs. If an alternative less costly method of viewing the records is available, the statement must include a notice that the requestor may contact the governmental body regarding the alternative method. The governmental body must inform the requestor of the responsibilities imposed on the requestor by this section and of the rights granted by this entire section and give the requestor the information needed to respond, including:
 - (1) that the requestor must provide the governmental body with a mailing,

facsimile transmission, or electronic mail address to receive the itemized statement and that it is the requestor's choice which type of address to provide;

- (2) that the request is considered automatically withdrawn if the requestor does not respond in writing to the itemized statement and any updated itemized statement in the time and manner required by this section; and
- (3) that the requestor may respond to the statement by delivering the written response to the governmental body by mail, in person, by facsimile transmission if the governmental body is capable of receiving documents transmitted in that manner, or by electronic mail if the governmental body has an electronic mail address.

TEX. GOV'T CODE § 552.2615(a).

On September 21, 2017, Appellee sent TTU nine requests, five of which are subject to this appeal. (CR. 332-336). TTU sent Dolcefino a cost estimate for the September 21, 2017, request, as well as a revised estimate when the request was narrowed by Dolcefino. The first estimate, for \$18,422.50, was sent by U.S. Certified Mail on October 5, 2017; the revised estimate, for \$4,666.00, was sent by U.S. Certified Mail on October 23, 2017. (CR. 340-342). TEX. GOV'T CODE § 552.2615(e)(2).

Dolcefino responded to the first notice of the estimated charges by narrowing his request, but did not respond to the revised estimate as set out in TEX. GOV'T CODE § 552. 2615(b). Dolcefino could have accepted the proposed charges or filed a complaint with the attorney general alleging that he was being overcharged. TEX. GOV'T CODE § 552.2615(b). The deadline for Dolcefino to do either was **ten business days** after October 23, 2017, when the cost statement was sent to him, though TTU allowed thirty business days due to vague data related statutes and an abundance of caution. (CR. 340-342). Dolcefino did not accept or pay the charges, or file a complaint with the attorney general within even the more generous thirty business days TTU gave him. Accordingly, the request is withdrawn. TEX. GOV'T CODE § 552.2615(b). Consequently, Dolcefino is not a “requestor” with respect to this request, and he lacks standing to assert any claims with respect to it under TEX. GOV'T CODE § 552.321(a).

On October 10, 2017, Dolcefino sent a PIA request to TTU seeking emails sent by Texas Tech University Board of Regents member L. Frederick Francis “which relate to University business.” (CR. 353). On October 24, 2017, TTU sent Dolcefino a cost estimate stating that the

cost to retrieve and produce the requested information would be \$2,127.50, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. (CR. 354-356). Dolcefino did neither, so the October 10, 2017, request is withdrawn, TEX. GOV'T CODE § 552.2615(b). (CR. 354-356). Consequently, as explained above regarding Dolcefino's September 21, 2017, requests, Dolcefino is not a "requestor" with respect to this request, and he lacks standing to assert any claims with respect to it under TEX. GOV'T CODE § 552.321(a).

On October 12, 2017, Dolcefino sent a PIA request to TTU seeking all emails between January 1, 2016, and October 12, 2017, (1) from Texas Tech University Board of Regents member Tim Lancaster "which relate to University business," and (2) between Chancellor Robert Duncan and Tim Lancaster. (CR. 372). On October 26, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce the requested information would be \$1,307.50, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his

request would be considered withdrawn. Dolcefino did neither, so the October 12, 2017, request is also withdrawn by statute, TEX. GOV'T CODE § 552.2615(b). (CR. 373-375).

On October 13, 2017, Dolcefino sent a PIA request to TTU seeking all emails between January 1, 2016, and October 13, 2017, (1) from Texas Tech University Board of Regents member John Esparza “which relate to University business,” and (2) between Chancellor Robert Duncan and John Esparza. (CR. 376). On October 27, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce the requested information would be \$1,115.00, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the October 13, 2017, request is withdrawn, TEX. GOV'T CODE § 552.2615(b). (CR. 377-379).

On October 16, 2017, Dolcefino sent a PIA request to TTU seeking all emails between January 1, 2016, and October 16, 2017, (1) from Texas Tech University Board of Regents member Mickey L. Long “which relate to University business,” and (2) between Chancellor Robert Duncan and

Mickey L. Long. (CR. 380). On October 30, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce the requested information would be \$307.50, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn.. Dolcefino did neither, so the October 16, 2017, request is also withdrawn, TEX. GOV'T CODE § 552.2615(b).

On October 17, 2017, Dolcefino sent a PIA request to TTU seeking all emails between January 1, 2016, and October 17, 2017, (1) from Texas Tech University Board of Regents member Ronnie Hammonds “which relate to University business,” and (2) between Chancellor Robert Duncan and Ronnie Hammonds. (CR. 384). On October 31, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce the requested information would be \$217.50, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the October 17, 2017, request is also statutorily withdrawn, TEX. GOV'T CODE

§ 552.2615(b).

On October 18, 2017, Dolcefino sent a PIA request to TTU seeking all emails between January 1, 2016, and October 18, 2017, (1) from Texas Tech University Board of Regents member Christopher M. Huckabee “which relate to University business,” and (2) between Chancellor Robert Duncan and Christopher M. Huckabee. (CR. 388). On November 1, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce the requested information would be \$3,080.00, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the October 18, 2017, request is also withdrawn, TEX. GOV’T CODE § 552.2615(b). (CR. 389-391).

On October 19, 2017, Dolcefino sent a PIA request to TTU seeking all emails between January 1, 2016, and October 19, 2017, (1) from Texas Tech University Board of Regents member J. Michael Lewis “which relate to University business,” and (2) between Chancellor Robert Duncan and J. Michael Lewis. (CR. 392). On November 2, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and

produce the requested information would be \$172.50. TTU sent an amended cost estimate on November 6, 2017, stating that the cost would be \$472.50. Each cost notice stated that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the October 19, 2017, request is statutorily withdrawn, TEX. GOV'T CODE § 552.2615(b). (CR. 396-398).

On October 20, 2017, Dolcefino sent a PIA request to TTU seeking all emails between January 1, 2016, and October 20, 2017, (1) from Texas Tech University Board of Regents member John Steinmetz “which relate to University business,” and (2) between Chancellor Robert Duncan and John Steinmetz. (CR. 399-400). On November 3, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce the requested information would be \$2,970.00, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the

October 20, 2017, request is, statutorily withdrawn, TEX. GOV'T CODE § 552.2615(b). (CR. 401-403).

On October 23, 2017, Dolcefino sent a PIA request to TTU seeking all emails between January 1, 2016, and October 23, 2017, (1) from Texas Tech University Board of Regents member John Walker “which relate to University business,” and (2) between Chancellor Robert Duncan and John Walker. (Dolcefino’s petition mistakenly alleges that this request was dated October 22, 2017). (CR. 404). On November 6, 2017, TTU sent Dolcefino a cost estimate, stating that the cost to retrieve and produce the requested information would be \$1,164.00, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the October 23, 2017, request is withdrawn by statute, TEX. GOV'T CODE § 552.2615(b). (CR. 405-407).

On October 25, 2017, Dolcefino sent a PIA request to TTU seeking all emails amid January 1, 2016, and October 25, 2017, between Chancellor Robert Duncan and L. Frederick Francis. (CR. 408). On November 8, 2017, TTU sent Dolcefino a cost estimate, stating that the

cost to retrieve and produce the requested information would be \$127.50, and that unless Dolcefino responded within thirty business days by sending a deposit or bond (or filing a complaint with the Attorney General about being overcharged) his request would be considered withdrawn. Dolcefino did neither, so the October 25, 2017, request is also withdrawn, TEX. GOV'T CODE § 552.2615(b). (CR. 409-410).

Dolcefino is, therefore, not a “requestor” with respect to any of these requests, and he lacks standing to assert any claims with respect to them all under TEX. GOV'T CODE § 552.321(a). Thus, the trial court lacked jurisdiction to consider Dolcefino’s claims against TTU with respect to all of these requests above.

PRAYER

Appellant requests this court to overturn the lower court’s decision and rule that the court has no jurisdiction with regard to requests that were withdrawn by operation of law where Appellee failed to pay the estimated costs or properly contest the estimated costs with the attorney general and where the Appellant has no information responsive to the request.

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I certify that a true and correct copy of the foregoing document has been sent via E-service by File & Serve Xpress on this the 17th day of July, 2018 to:

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CERTIFICATE OF COMPLIANCE

Pursuant to TRAP 9.4(i)(3), the undersigned Assistant Attorney General hereby certifies that the preceding document complies with the type-volume limits in TRAP 9.4.

1. Excluding the exempted portions in TRAP 9.4(i)(1), the brief contains: 5,622 words; and
2. has been prepared using Microsoft Word in 14 pt Century School conventional typeface Font with 10 pt footnotes.

The undersigned understands that a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in TRAP 9.4, may result in the court's striking the brief and prohibiting the party from filing further documents of the same kind.

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