

CAUSE NO. 2018528740

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DOLCEFINO	§	IN THE DISTRICT COURT OF
COMMUNICATIONS, LLC DBA	§	
DOLCEFINO CONSULTING,	§	
<i>Plaintiff</i>	§	
	§	LUBBOCK COUNTY, TEXAS
v.	§	
	§	
TEXAS TECH UNIVERSITY,	§	
<i>Defendant.</i>	§	99th JUDICIAL DISTRICT

**DEFENDANT’S THIRD AMENDED PLEA TO THE JURISDICTION ON  
ALL REMAINING PUBLIC INFORMATION ACT REQUESTS**

TO THE HONORABLE JUDGE WILLIAM C. SOWDER:

The recent ruling in *Tex. Tech Univ. v. Dolcefino Communs.*, No. 07-18-00225-CV, 2018 Tex. App. LEXIS 9952, 2018 WL 6332572 (Tex. App.—Amarillo 2018, no pet.), the opinions by the Office of the Attorney General of Texas,<sup>1</sup> and actions by Texas Tech University (“TTU”), deprived this Court of jurisdiction over Dolcefino Consulting’s (“Dolcefino”) remaining claims.

First, the remaining requests in this litigation where Dolcefino failed to pay or object to TTU invoices—in accordance with Texas Government Code section 552.2615(b)—are withdrawn as a matter of law, depriving this Court of jurisdiction to further adjudicate the claims.

Second, Dolcefino cannot create jurisdiction over the remaining requests where TTU conducted a search and found no responsive documents.

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<sup>1</sup> Multiple opinions by the Office of Attorney General are attached to each requisite request and included in Exhibit A attachments.

Finally, TTU sought an opinion from the Office of the Attorney General (“OAG”), and subsequently produced all public information that was not excepted by the OAG opinion.

Because TTU has followed the requirements of the Public Information Act and Dolcefino has not, this Court lacks jurisdiction to adjudicate any remaining claims for public information in this case.

Therefore, this Court should grant TTU’s *Plea to the Jurisdiction* and dismiss Dolcefino’s remaining claims.

## **PROCEDURAL HISTORY**

### **A. TRIAL COURT**

On April 25, 2018, Plaintiff (“Dolcefino”) filed its Second Amended Petition for mandamus relief under § 552.321 of the Texas Government Code seeking to compel TTU to release records in response to Plaintiff’s open records requests. Plaintiff’s Petition also brought claims for declaratory relief under Chapter 37 of the Texas Civil Practice and Remedies Code. TTU filed Defendant’s Second Amended Plea to the Jurisdiction on April 30, 2018, stating that this court lacked jurisdiction to consider Plaintiff’s claims. On June 4, 2018, this court granted TTU’s plea to the jurisdiction as to the declaratory relief claims; however, the plea to the jurisdiction as to Plaintiff’s mandamus relief was denied.

### **B. APPEAL**

On June 5, 2018, TTU filed its notice of an interlocutory appeal in the Seventh Court of Appeals, Amarillo, Texas. In its review, the Court of Appeals first analyzed

the statutory language of the Texas Government Code and found that the requirements of § 552.321 create a statutory prerequisite to the waiver of immunity permitting a requestor to seek a writ of mandamus in district court. Next, the Court of Appeals applied the statutory prerequisite to the waiver of immunity and concluded that TTU's evidence showed that it was not "refusing" to produce public information as required for jurisdiction under § 552.321. Therefore, the Court of Appeals held that the existence of jurisdiction had been negated because Plaintiff's requests were withdrawn as a matter of law and because TTU did not refuse to supply information in response to Plaintiff's open records requests. *See Tex. Tech Univ. v. Dolcefino Communs.*, No. 07-18-00225-CV, 2018 Tex. App. LEXIS 9952, 2018 WL 6332572 (Tex. App.—Amarillo 2018, no pet.).

### C. CURRENT STATUS

This Court no longer has jurisdiction over any of the remaining requests in his live pleading because: Dolcefino failed to pay the invoice or object to the invoice and thus the requests are withdrawn by operation of law; public information responsive to the request did not exist; or TTU produced public information in accordance with an Opinion from the Office of the Attorney General's Opinion ("OAG"). Indeed, Plaintiff's Second Amended Petition is before this Court and the "live" pleading in this case. In Plaintiff's Second Amended Petition at paragraph 38, Plaintiff submitted a chart outlining the requests that are the subject of this lawsuit. TTU, now incorporates Dolcefino's chart showing the requests at issue here and attaches it here as **Exhibit A, appx. 0001-4**. Exhibit A identifies and attaches the requests and

corresponding documents. After the Court of Appeal’s ruling, the remaining requests pending, and the focus of this motion are requests marked R-26 through R-45.

Additionally, Dolcefino failed to include request 32 (R-32) in his live pleading. *See Tex. Tech Univ*, 2018 Tex. App. LEXIS 9952, 2018 WL 6332572 at 5. Even though Dolcefino failed to include this request in this mandamus proceeding, should he amend to include R-32, there is no jurisdiction to adjudicate that request. Indeed, R-32 produced no public information. **Exhibits A, attachment 17; appx. 0308-311. and B.** Exhibit B is Ronny Wall’s affidavit. Therefore, this Court lacks jurisdiction over R-32—should Dolcefino amend to include in this mandamus proceeding. *Id.*

## **II. ARGUMENT AND AUTHORITIES**

### **A. SOVEREIGN IMMUNITY**

Whether a trial court has subject matter jurisdiction is a question of law. *Texas Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). “The burden is on the plaintiff to affirmatively demonstrate the trial court’s jurisdiction.” *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 150 (Tex. 2012); *see, e.g., Ex parte Springsteen*, 506 S.W.3d 789, 798 n.50 (Tex. App.—Austin 2016, pet. Denied) (citing *City of Elsa v. Gonzalez*, 325 S.W.3d 622, 625 (Tex. 2010) (per curium)). Governmental immunity from suit implicates a court’s subject matter jurisdiction and is therefore properly asserted in a plea to the jurisdiction. *Houston Belt & Terminal Ry. Co. v. City of Hous.*, 487 S.W.3d 154, 160 (Tex. 2016); *Miranda*, 133 S.W.3d at 226.

When, as here, a plea to the jurisdiction challenges the pleadings, courts must look to the pleader's intent, construe the pleadings liberally in favor of jurisdiction, and accept the allegations in the pleadings as true to determine if the pleader has alleged sufficient facts to affirmatively demonstrate the trial court's jurisdiction to hear the cause. *Heckman*, 369 S.W.3d at 226. When the pleadings fail to allege sufficient facts to affirmatively demonstrate the trial court's jurisdiction but do not affirmatively demonstrate an incurable jurisdictional defect, the issue is one of pleading sufficiency, and the plaintiff should be given an opportunity to amend. *Miranda*, 133 S.W.3d at 226-27. If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiff an opportunity to amend. *Id.* at 227.

**B. THIS COURT LACKS JURISDICTION OVER ANY OF DOLCEFINO'S REQUESTS IDENTIFIED IN HIS LIVE PLEADING.**

The Legislature prescribed that all statutory prerequisites to suit are jurisdictional in suits against governmental entities. TEX. GOV'T CODE ANN. § 311.034 (West 2013). Claims that prerequisites to suit have not been met are properly asserted in a plea to the jurisdiction. *See Tex. Tech Univ. v. Dolcefino Communs.*, No. 07-18-00225-CV, 2018 Tex. App. LEXIS 9952, 2018 WL 6332572 \*2 (Tex. App.—Amarillo 2018, no pet.) (citing *Prairie View A & M University v. Chatha*, 381 S.W.3d 500, 511 (Tex. 2012). TTU contends that the requirements of § 552.321 of the Texas Government Code are “statutory prerequisites” to suit and that those prerequisites were not satisfied when Plaintiff filed suit. *See Id.*

But the mandamus provision of the PIA does not permit such claims. Texas Government Code § 552.321(a) permits Dolcefino’s claims only if he can plead and prove that TTU “refused to request an attorney general’s decision” or “refuses to supply public information that the attorney general has determined is public.” TEX. GOV’T CODE § 552.321(a) Dolcefino claims that both exist. Not so.

The Seventh Court of Appeals just explained that the statutory language imposes jurisdictional requirement “refuses to supply public information” or “refuses to request an attorney general’s decision.” *Tex. Tech Univ*, 2018 Tex. App. LEXIS 9952, 2018 WL 6332572 at 2; *City of Galveston v. CDM Smith, Inc.*, 470 S.W.3d 558, 572 (Tex. App.—Houston [14th Dist.] 2015, pet. denied) (same). Because the requirements of § 552.321 create a statutory prerequisite to the waiver of immunity permitting a requestor to seek a writ of mandamus in district court, this Court can exercise jurisdiction only where Dolcefino makes the requisite showing. *Id.*

Dolcefino cannot meet that burden here because TTU has dispositive evidence for each of Dolcefino’s remaining claims that TTU provided all responsive documents or sought an Attorney General’s opinion and produced all required documents not excepted under the PIA.

**1. This Court cannot exercise jurisdiction over Dolcefino’s claims concerning nonexistent information.**

This Court lacks subject matter jurisdiction over any requests that did not yield public information. *Tex. Tech Univ. v. Dolcefino Communs.*, No. 07-18-00225-CV, 2018 Tex. App. LEXIS 9952, 2018 WL 6332572 (Tex. App.—Amarillo 2018, no pet.). A search for Dolcefino’s Requests- 32 and 34 (R-32 and R-34) yielded no public

information, of which Dolcefino was informed. **Exhibit B**; *see also*, **Exhibit A, attachment 17; appx. 0308-311.**

**November 30, 2017 Request (R-32).**

Dolcefino failed to ask this Court to direct TTU to produce R-32 in his mandamus proceeding. *Id.* at 5. Therefore, the Amarillo Court of Appeals did not review on appeal. *Id.* Nevertheless, should Dolcefino seek to amend to include R-32, like the other requests that failed to produce any public information, R-32 also did not produce public information. **Exhibit B**; *see also*, **Exhibit A, attachment 17; appx. 0308-311.** Thus, this Court lacks jurisdiction over R-32.

**January 31, 2018 Request (R-34).**

Specifically, on January 31, 2018, Plaintiff sent a PIA request to TTU seeking “digital production of all files saved in file: ///G:\Communications\Leach referenced in Jordan Strebeck’s sent email dated January 6, 2010, 1:10 pm.” TTU responded on Feb 14, 2018, indicating that it had no such responsive information. **Exhibits B; see also, A, attachment 1; appx. 0005-8.** Therefore, this Court lacks jurisdiction over Plaintiff’s January 31, 2018 (R-34), claim because TTU did not refuse to request an Attorney General’s decision, or refuse to supply public information or information that the Attorney General has determined is public. *Id.* Therefore, this Court lacks jurisdiction over R-34 or any requests that—after TTU searched—failed to yield any public information.

**2. Similarly, requests withdrawn by operation of law cannot vest jurisdiction in this Court.**

The Amarillo Court of Appeals ruled that any requests where Dolcefino failed to either pay for or object to cost invoices results in withdrawal of those requests. *Id.* The Court of Appeals did not review R-38 or R-39. However, with R-38 and R-39 the same situation arose. Indeed, after TTU received R-38 and R-39, it submitted its cost estimates, which Dolcefino failed to pay or properly object. **Exhibit A, attachment 2; appx. 0009-26; attachment 3; 00027-38.** Therefore, this Court lacks jurisdiction over R-38 and R-39.

**April 9, 2018 Request (R-38).**

Specifically, on April 9, 2018, Plaintiff sent a PIA request to TTU seeking “Copies of all documents detailing any settlements, payments, or complaints of harassment or assault by any students, faculty, or staff of Texas Tech University between January 1, 2013 and the present.” TTU requested an opinion from the Attorney General on April 23, 2018, which was issued on June 29, 2018 (OR2018-15490). Pursuant to § 552.2615(a) of the Texas Government Code, TTU sent a cost estimate to the Plaintiff on July 17, 2018, which was met with no response. TTU’s cost estimate also notified the Plaintiff of the following: “Pursuant to the Public Information Act, your request is considered automatically withdrawn if you do not respond in writing to this itemized statement and provide the appropriate deposit or bond within 10 days after this statement was mailed.” **Exhibit A, attachment 2; appx. 0009-26.** TTU’s cautionary statement regarding deemed withdrawals arises

from § 552.2615(b) of the Texas Government Code, which provides that PIA requests are:

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.

**April 10, 2018 Request (R-39).**

Likewise, on April 10, 2018, Plaintiff sent a PIA request to TTU seeking “Copies of any documents detailing payments to vendors related to the Texas Tech Football Program, should include the date, the name of the vendor, and the amount paid, between January 1, 2015 and the present.” TTU requested an opinion from the Attorney General on April 24, 2018, which was issued on July 2, 2018 (OR2018-15730). TTU released a spreadsheet of all athletic transactions and, pursuant to § 552.2615(a) of the Texas Government Code, also sent a cost estimate for the remaining information on July 12, 2018. TTU’s cost estimate also notified the Plaintiff of the following: “Pursuant to the Public Information Act, your request is considered automatically withdrawn if you do not respond in writing to this itemized statement and provide the appropriate deposit or bond within 10 days after this statement was mailed.” **Exhibit A, attachment 3; 00027-38.** Again, TTU’s cautionary statement regarding deemed withdrawals arises from § 552.2615(b) of the Texas Government Code, which provides that PIA requests are:

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. GOVT. CODE ANN. § 552.2615(b) (West 2012). Consequently, Plaintiff's requests expired when time to act under the statute expired. *See Tex. Tech Univ*, 2018 Tex. App. LEXIS 9952, 2018 WL 6332572 at 3. In the absence of a pending request, there was no refusal to respond by TTU. *Id.* Therefore, this court lacks jurisdiction because TTU was not "refus[ing] to supply public information," as to this request as required under section 552.321. **Exhibit A, attachment 2; appx. 0009-26; attachment 3; 00027-38.** supports TTU's jurisdictional plea with respect to this request for which Plaintiff seeks relief against TTU.

Because Dolcefino failed to pay or properly object to TTU's cost estimates, R-38 and the remaining parts of R-39 are withdrawn by operation of law and are no longer requests under the PIA. Therefore, TTU respectfully requests that this Court grant its plea to the jurisdiction.

**3. TTU's compliance with the PIA forecloses any remaining claims against it for information exempted by the OAG.**

**October 26, 2017 Request (R-26).**

On October 26, 2017, Plaintiff sent a Public Information Act ("PIA") request to TTU seeking "A digital spreadsheet detailing the total amount of legal fees Texas Tech paid to any law firm associated with the Mike Leach investigation and litigation." Plaintiff additionally requested that the spreadsheet include the names of

said law firms involved in the investigation. This information has been fully disclosed to Plaintiff, and all requested responsive documents have been released as of November 9, 2017. 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). Therefore, this Court lacks jurisdiction over Plaintiff's October 26, 2017, claim because TTU did not refuse to request an Attorney General's decision or refuse to supply public information or information that the Attorney General has determined is public. See **Exhibit A, attachment 4; appx. 0039-42.**

**October 27, 2017 Request (R-27).**

The Court of Appeals noted in its opinion that TTU did not contest the trial court's jurisdiction over the October 27, 2017, PIA request, therefore this request was not reviewed by the Court in its December 4, 2018 Opinion. *See Tex. Tech Univ*, 2018 Tex. App. LEXIS 9952, 2018 WL 6332572 at 6. Although TTU failed to contest jurisdiction of this claim in its Second Amended Plea to the Jurisdiction, this does not operate as a waiver of subject matter jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440 (Tex. 1993). TTU cannot consent to suit on a claim beyond the court's jurisdiction. *Rusk State Hosp. v. Black*, 392 S.W.3d 88 (Tex. 2012). TTU instead contends that this court lacks subject matter jurisdiction on Plaintiff's PIA claims—claims which do not meet the statutory prerequisites for review in this court.

On October 27, 2017, Plaintiff sent a PIA request to TTU seeking “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 allegations against Mike Leach.” TTU released some of the requested documents on December 12, 2017. TTU sought a timely opinion from the Attorney General, which was received on February 23, 2018 (OR2018-03986). All remaining documents not withheld pursuant to the Attorney General’s opinion were released on March 9, 2018. **See Exhibit A, appx. 0002.**

As before, 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). Therefore, this Court lacks jurisdiction over Plaintiff’s October 27, 2017, claim because TTU did not refuse to request an Attorney General’s decision, or refuse to supply public information or information that the Attorney General has determined is public. **Exhibit A, attachment 5; appx. 0043-71.**

**October 27, 2017 Request (R-28).**

Also on October 27, 2017, Plaintiff sent a PIA request to TTU seeking “Emails sent or received by Chancellor Kent Hance relating to Mike Leach from September 1, 2009 to February 28, 2010.” TTU sent a cost estimate on November 10, 2017, and Plaintiff paid all fees on November 20, 2017. TTU released some of the requested documents on December 12, 2017, and sought a timely opinion from the Attorney General, which was received on February 23, 2018 (OR2018-03986). All remaining documents not withheld pursuant to the Attorney General’s opinion were released on March 9, 2018.

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). Therefore, this Court lacks jurisdiction over Plaintiff's October 27, 2017, claim because TTU did not refuse to request an Attorney General's decision, or refuse to supply public information or information that the Attorney General has determined is public. See **Exhibit A, attachment 5; appx. 0043-71.**

**October 30, 2017 Request (R-29).**

On October 30, 2017, Plaintiff sent a PIA request to TTU seeking "Copies of all payments made by Texas Tech to Kent Hance since the date of his resignation." This information has been fully disclosed to Plaintiff, and all requested responsive documents have been released as of November 13, 2017. 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). Therefore, this Court lacks jurisdiction over Plaintiff's October 30, 2017, claim because TTU did not refuse to request an Attorney General's decision, or refuse to supply public information or information that the Attorney General has determined is public. See **Exhibit A, attachment 6; appx. 0072-75.**

**November 6, 2017 Request (R-30).**

The Court of Appeals noted in its opinion that TTU did not contest the trial court's jurisdiction over the November 6, 2017, PIA request, therefore this request was not reviewed by the Court in its December 4, 2018, Opinion. *See Tex. Tech Univ*, 2018 Tex. App. LEXIS 9952, 2018 WL 6332572 at 5. Although TTU failed to contest

jurisdiction of this claim in its Second Amended Plea to the Jurisdiction, this does not operate as a waiver of subject matter jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440 (Tex. 1993). TTU cannot consent to suit on a claim beyond the court's jurisdiction. *Rusk State Hosp. v. Black*, 392 S.W.3d 88 (Tex. 2012). TTU instead contends that this Court lacks subject matter jurisdiction on Plaintiff's PIA claims—claims which do not meet the statutory prerequisites for review in this court.

On November 6, 2017, Plaintiff sent a PIA request to TTU seeking “Copies of Kelly Overly’s resume...Copies of all publicly releasable documents from Kelly Overly’s personnel file... Copies of any email correspondence between Kelly Overly and Kent Hance for all time.” TTU released some of the requested documents on December 15, 2017, and sought a timely opinion from the Attorney General, which was issued on February 23, 2018 (OR2018-04298). All remaining documents not withheld pursuant to the Attorney General’s opinion were released on March 9, 2018. 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). Therefore, this Court lacks jurisdiction over Plaintiff’s November 6, 2017, claim because TTU did not refuse to request an Attorney General’s decision, or refuse to supply public information or information that the Attorney General has determined is public. See **Exhibit A, attachment 7; appx. 0076-99.**

**November 14, 2017 Request (R-31).**

On November 14, 2017, Plaintiff sent a PIA request to TTU seeking “Hance’s post\resignation contract.” This information has been fully disclosed to Plaintiff, and all requested responsive documents have been released as of November 29, 2017. 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). Therefore, this Court lacks jurisdiction over Plaintiff’s November 14, 2017, claim because TTU did not refuse to request an Attorney General’s decision, or refuse to supply public information or information that the Attorney General has determined is public. See **Exhibit A, attachment 8; appx. 0100-110.**

**January 18, 2018 Request (R-33).**

On January 18, 2018, Plaintiff sent a PIA request to TTU seeking “PDF copies of all emails between Kent Hance and Jodey Arrington between September 1, 2009 and March 1, 2010, related to Mike Leach, and/or ‘M/L,’ and/or any investigation regarding Adam James.” TTU sought an opinion from the Attorney General on February 8, 2018, which was issued on April 11, 2018 (OR2018-08255). The Attorney General determined that the information requested is excepted from disclosure.

TTU complied with the Attorney General’s opinion and did not release the excepted information. TTU’s inaction in connection with this request is not a basis for a suit for writ of mandamus. Because TTU requested an Attorney General’s opinion in accordance with the TEX. GOV’T CODE § 552.321, this Court lacks

jurisdiction necessary to consider Plaintiff's claims against TTU with respect to the January 18, 2018, request. See **Exhibit A, attachment 9; appx. 0111-127.**

**April 5, 2018 Request (R-35).**

On April 5, 2018, Plaintiff sent a PIA request to TTU seeking "Copies of all sent emails between January 1, 2016 and the present, from Texas Tech University Board of Regents member Mickey L. Long which relate to University business." TTU sought a timely opinion from the Attorney General on April 19, 2018, which was issued on June 27, 2018 (OR2018-15322). The documents were released in accordance with the Opinion on July 12, 2018. The remaining documents were withheld per the Attorney General's opinion. Therefore, this Court lacks jurisdiction over Plaintiff's April 5, 2018, claim because TTU did not refuse to request an Attorney General's decision, or refuse to supply public information or information that the Attorney General has determined is public. See **Exhibit A, attachment 10; appx. 0128-160.**

**April 5, 2018 Request (R-36).**

On April 5, 2018, Plaintiff sent a PIA request to TTU seeking "Copies of all email communications between Chancellor Robert Duncan and Texas Tech University Board of Regents member Mickey L. Long between January 1, 2016 and the present." TTU sought a timely opinion from the Attorney General on April 19, 2018, which was issued on June 27, 2018 (OR2018-15322). Documents were released in accordance with the Opinion on July 12, 2018, and the remaining responsive documents were withheld per the opinion. Therefore, this Court lacks jurisdiction

over Plaintiff's April 5, 2018 claim because TTU did not refuse to request an Attorney General's decision, or refuse to supply public information or information that the Attorney General has determined is public. See **Exhibits A, attachment 10; appx. 0128-160.**

**April 6, 2018 Request (R-37).**

On April 6, 2018, Plaintiff sent a PIA request to TTU seeking "Copies of all emails sent or received between Texas Tech University Board of Regents member Larry Anders AND OR Jerry Turner, Kent Hance, Charlotte Bingham, between December 10, 2009 and December 31, 2010, which relate to University business." TTU requested an opinion from the Attorney General on April 20, 2018, which was issued on June 27, 2018 (OR2018-15320). Responsive documents not withheld by the Attorney General were released on July 12, 2018. Therefore, this Court lacks jurisdiction over Plaintiff's April 6, 2018, claim because TTU did not refuse to request an Attorney General's decision, or refuse to supply public information or information that the Attorney General has determined is public. See **Exhibit A, attachment 11; appx. 0161-177.**

**April 11, 2018 Request (R-40).**

On April 11, 2018, Plaintiff sent a PIA request to TTU seeking "Copies of all email communications between any Chancellor, Vice Chancellor, or Chancellor Emeritus and Texas Tech University Board of Regents member Christopher M. Huckabee between January 1, 2016 and the present." TTU requested an opinion from

the Attorney General on April 25, 2018, which was issued on July 3, 2018 (OR2018-15914). Responsive documents not withheld by the Attorney General were released on July 20, 2018. Therefore, this Court lacks jurisdiction over Plaintiff's April 11, 2018, claim because TTU did not refuse to request an Attorney General's decision, or refuse to supply public information or information that the Attorney General has determined is public. See **Exhibit A, attachment 12; appx. 0178-203**.

**April 12, 2018 Request (R-41).**

On April 12, 2018, Plaintiff sent a PIA request to TTU seeking "Copies of all email communications between any Chancellor, Vice Chancellor or Chancellor Emeritus and Texas Tech University Board of Regents member L. Frederick Francis between January 1, 2016 and present." TTU sought a timely opinion from the Attorney General on April 26, 2018, which was issued on July 5, 2018 (OR2018-15985). Responsive documents not withheld by the Attorney General were released on July 20, 2018. Therefore, this Court lacks jurisdiction over Plaintiff's April 12, 2018 claim because TTU did not refuse to request an Attorney General's decision, or refuse to supply public information or information that the Attorney General has determined is public. **Exhibit A, attachment 13; appx. 0204-228**. supports TTU's jurisdictional plea with respect to this request for which Plaintiff seeks relief against TTU.

**April 13, 2018 Request (R-42).**

On April 13, 2018, Plaintiff sent a PIA request to TTU seeking "Copies of all documents detailing any communications between any staff member of Texas Tech

University and any member of the Lubbock Police Department regarding allegations of sexual assault between January 1, 2013 and the present.” TTU sought a timely opinion from the Attorney General on April 27, 2018, which was issued on July 25, 2018 (OR2018-18111). Documents not withheld by the Attorney General were released on August 8, 2018. Therefore, this Court lacks jurisdiction over Plaintiff’s April 13, 2018, claim because TTU did not refuse to request an Attorney General’s decision, or refuse to supply public information or information that the Attorney General has determined is public. See **Exhibit A, attachment 14; appx. 0229-251. April 13, 2018 Request (R-43).**

On April 13, 2018, Plaintiff sent a PIA request to TTU seeking “Copies of all documents detailing any written complaint and subsequent investigation as well any completed investigation into allegations of a hostile work environment in the Texas Tech University Biology Department.” TTU sought a timely opinion from the Attorney General on April 27, 2018, which was issued on July 25, 2018 (OR2018-18111). Documents not withheld pursuant to the Attorney General’s opinion were released on August 8, 2018. Therefore, this Court lacks jurisdiction over Plaintiff’s April 13, 2018, claim because TTU did not refuse to request an Attorney General’s decision, or refuse to supply public information or information that the Attorney General has determined is public. See **Exhibit A, attachment 14; appx. 0229-251. April 16, 2018 Request (R-44).**

On April 16, 2018, Plaintiff sent a PIA request to TTU seeking “Copies of all email communications between any Chancellor, Vice Chancellor or Chancellor

Emeritus and Texas Tech University Board of Regent member Tim Lancaster between January 1, 2016 and the present.” TTU sought a timely opinion by the Attorney General on April 30, 2018, which was issued on July 9, 2018 (OR2018-16471). Responsive documents not withheld by the Attorney General were released on July 24, 2018. Therefore, this Court lacks jurisdiction over Plaintiff’s April 16, 2018, claim because TTU did not refuse to request an Attorney General’s decision, or refuse to supply public information or information that the Attorney General has determined is public. See **Exhibit A, attachment 15; appx. 0252-279.**

**April 17, 2018 Request (R-45).**

On April 17, 2018, Plaintiff sent a PIA request to TTU seeking “Copies of all email communications between any Chancellor, Vice Chancellor, or Chancellor Emeritus and Texas Tech University Board of Regents member Ron Hammonds between January 1, 2016 and the present.” TTU sought a timely opinion by the Attorney General on May 1, 2018, which was issued on July 10, 2018 (OR2018-16559). Responsive documents not withheld by the Attorney General were released on July 24, 2018. The remaining documents were withheld per the opinion, in accordance with TEX. GOV’T CODE § 552.103 (a). Therefore, this Court lacks jurisdiction over Plaintiff’s April 17, 2018 claim because TTU did not refuse to request an Attorney General’s decision, or refuse to supply public information or information that the Attorney General has determined is public. See **Exhibits A, attachment 16; appx. 0280-307.**

## CONCLUSION

Because the Plaintiff failed to invoke this Court's jurisdiction, this Court should grant Texas Tech University's *Plea to the Jurisdiction* and dismiss the remaining claims in this litigation with prejudice and any other relief to which Defendant may be justly entitled.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via E-service by File & Serve Texas on this the 14<sup>th</sup> day of February, 2019, to:

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