

NO. DC-15-04484

STATE FAIR OF TEXAS,

*Plaintiff,*

V.

RIGGS & RAY, P.C.,

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

101ST JUDICIAL DISTRICT

OF DALLAS COUNTY, TEXAS

**DEFENDANT’S BRIEF IN SUPPORT OF  
MOTION TO DISMISS PURSUANT TO THE TEXAS  
CITIZENS PARTICIPATION ACT**

Comes Now Riggs & Ray, P.C., Defendant herein, and files *Defendant’s First Supplemental Motion to Dismiss Pursuant to the Texas Citizens Participation Act* and would respectfully show the Court the following:

**I. Introduction & Facts**

Plaintiff is the State Fair of Texas (the “SFT”). Defendant is Riggs & Ray, P.C. (“Riggs”). On or about March 20, 2015, Riggs sent to the SFT an open records request (the “Request”) pursuant to the Texas Public Information Act (“TPIA”). A true and correct copy of the request has already been filed as EX. D-1 attached to Defendant’s 1<sup>st</sup> Supplemental Original Answer. As way of convenience, the request is attached hereto as **EX. D-1** and is incorporated herein for all purposes.

The TPIA applies to “governmental bodies.” Riggs claims that the SFT qualifies as a governmental body under the TPIA because it receives public funds from the City of Dallas and otherwise shares common purposes and objectives with the city. (Request at pp. 1-2.)

On or about April 7, 2015, the SFT responded, through counsel, with a letter asking that several requests be narrowed or clarified. A true and correct copy of the response has been filed as EX. D-2 attached to Defendant's 1<sup>st</sup> Supplemental Original Answer. As way of convenience, the response is attached hereto as **EX. D-2** and is incorporated herein for all purposes.

On or about April 15, 2015, Riggs replied to the SFT and refused to modify the requests. A true and correct copy of the reply has been filed as EX. D-3 attached to Defendant's 1<sup>st</sup> Supplemental Original Answer. As way of convenience, the response is attached hereto as **EX. D-3** and is incorporated herein for all purposes.

Instead of seeking an opinion from the Attorney General in order to resolve this dispute, the SFT sued Riggs on April 21, 2015. As way of convenience, the petition is attached hereto as **EX. D-4** and is incorporated herein for all purposes

This case is controlled by a Level 3 discovery control plan. The scheduling order entered on May 28, 2015, contains both a deadline for fact discovery and for expert discovery. The deadline to complete fact discovery is February 12, 2016. The deadline to complete expert discovery is April 25, 2016. This case is set for a bench trial on June 7, 2016.

## **II. Summary of the Argument**

Riggs' request for information to the SFT was both an exercise of its right to free speech and an exercise of its right to petition as understood under the Texas Citizens Participation Act (the "TCPA" or the "Act"). Accordingly, the SFT now has the burden to establish by clear and specific evidence a prima facie case for each essential element of its claim. However, even if the SFT is able to put on such a showing, its case must still be dismissed because Riggs has shown by a preponderance of the evidence that the SFT's lawsuit is foreclosed by TEX. GOV'T CODE

§ 552.325(a), which in turn prohibits any person or entity from suing a requestor in order to withhold information.

### **III. Argument & Authorities**

#### **A. Standard.**

In general, the TCPA (at times the “Act”) allows for an expedited time table for a decision on the merits of claims which fall under the Act. The TCPA has been codified as Ch. 27 of the Texas Civil Practice & Remedies Code. Per the Act, “[i]f a legal action is based on, relates to, or is in response to a party’s exercise of the right of free speech, right to petition, or right of association, that party may file a motion to dismiss the legal action.” TEX. CIV. PRAC. & REM. CODE § 27.003(a).

The TCPA does not create a new defense to common law claims such as libel or slander. Rather, once a defendant has proven by the preponderance of the evidence that a plaintiff’s claims fall under the Act, the plaintiff is forced to establish “by clear and specific evidence a prima facie case for each essential element of the claim in question” in order to avoid dismissal. *See* TEX. CIV. PRAC. & REM. CODE § 27.005(b)-(c).<sup>1</sup>

In determining whether a legal action should be dismissed pursuant to the Act, a court “shall consider the pleadings and supporting and opposing affidavits....” TEX. CIV. PRAC. & REM. CODE § 27.006(a). The movant has the initial burden to establish by the preponderance of the evidence that a claim falls under the purview of the Act. TEX. CIV. PRAC. & REM. CODE

---

<sup>1</sup> The Texas Supreme Court has recently overturned a number of court of appeals decisions which had interpreted the phrase “clear and specific evidence” as requiring the application of a heightened evidentiary standard as well as the exclusion of circumstantial evidence. *In re Lipsky*, 2015 WL 1870073, \*7 (Tex. April 24, 2015) (“We accordingly disapprove those cases that interpret the TCPA to require direct evidence of each essential element of the underlying claim to avoid dismissal.”) The Texas Supreme Court has held that the TCPA “does not impose a higher burden of proof than that required of the plaintiff at trial.” *Id.*

§ 27.005(b). The burden then shifts to the claimant. If the party bringing the legal action fails to establish by clear and convincing evidence “a prima facie case for each essential element of the claim in question,” the legal action is dismissed. TEX. CIV. PRAC. & REM. CODE § 27.005(d). However, notwithstanding a claimant making the required prima facie case, a defendant is still entitled to dismissal should the defendant establish by a “preponderance of the evidence each essential element of a valid defense to the nonmovant’s claim.” TEX. CIV. PRAC. & REM. CODE § 27.005(d).

The hearing on a motion to dismiss must be set not later than the 60th day after the date of service of the motion, and while the TCPA allows for this time frame to be extended under limited circumstances<sup>2</sup>, “in no event shall the hearing occur more than 90 days after service of the motion,” unless discovery has been allowed. TEX. CIV. PRAC. & REM. CODE § 27.004. If the court orders discovery, the court may extend the hearing date to allow for the discovery, “but in no event shall the hearing occur more than 120 days after the service of the motion.” TEX. CIV. PRAC. & REM. CODE § 27.004(c). Finally, the court must rule on a motion to dismiss no later than the 30th day following the date of the hearing on the motion. TEX. CIV. PRAC. & REM. CODE § 27.005.

If the moving party is successful, the court *shall* award it its costs and reasonable attorney’s fees incurred in defending against the legal action and sanction the party who brought the legal action “as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in this chapter.” TEX. CIV. PRAC. & REM. CODE § 27.009. And a denial of a motion to dismiss is immediately appealable, and would stay all proceedings in

---

<sup>2</sup> A court may extend the hearing date if the docket conditions of the court require a later hearing, upon a showing of good cause, or by agreement of the parties. TEX. CIV. PRAC. & REM. CODE § 27.004(a).

the trial court pending the resolution of the appeal. TEX. CIV. PRAC. & REM. CODE § 51.014 (a)(12) and § 51.014(b).

**B. The SFT’s lawsuit is based on, relates to, and is in response to Riggs’ right of free speech.**

*i. The right of free speech under the TCPA.*

The TCPA provides its own definitions of constitutional rights. *See Wholesale TV & Radio Adver., LLC v. Better Bus. Bureau of Metro Dallas, Inc.*, Case No. 05-11-01337-CV, 2013 WL 3024692, at \* 2 (Tex. App.—Dallas 2013, no pet.) (mem. op.) (“[Wholesale argues that] the statements BBB made about Wholesale on BBB’s website amount to false commercial speech that should not be given protection under the First Amendment. But as we noted in *BH DFW*, the TCPA contains its own definition of “the right of free speech” that controls the applicability of the TCPA to particular speech.”) The TCPA defines the exercise of the right of free speech as “a communication made in connection with a matter of public concern.” TEX. CIV. PRAC. & REM. CODE § 27.001(3). A matter of public concern is further defined as an issue which relates to:

- (A) health or safety;
- (B) environmental, economic, or community well-being;
- (C) the government;
- (D) a public official or public figure; or
- (E) a good, product, or service in the marketplace.

TEX. CIV. PRAC. & REM. CODE § 27.001(7). It does not matter how the speech is communicated; if the speech is of, or relating to one of, the five categories of protected speech listed in the TCPA, the Act applies and a plaintiff’s lawsuit is amenable to dismissal. *See Whisenhunt v. Lippincott*, Case No. 13-0926, 2015 WL 1967025 (Tex. April 24, 2015) (overruling *Whisenhunt*

*v. Lippincott*, 416 S.W.3d 689, 700 (Tex. App.—Texarkana 2013) which had held that the TCPA only applied to public speech).

***ii. The Request was in connection to an issue relating to the government.***

The reason for the SFT’s lawsuit was that Riggs sent it a letter claiming that the SFT qualified as a governmental body under the TPIA and then requested disclosure of certain categories of documents. (Pl.’s Orig. Pet. at ¶ 9 and ¶ 17.)

Riggs contended in the Request that the SFT qualified as a “governmental body” under the TCPA because the City of Dallas had given it financial support, and that the SFT and the City of Dallas share common purposes and objectives. (Request at pp. 1-2.) The SFT’s lawsuit seeks a declaration that Riggs’ contentions are wrong. (Pl.’s Orig. Pet ¶ 8 and ¶ 17.)

However, whether Riggs’ contentions are ultimately correct is irrelevant as to the initial determination of whether the Request is in connection to a matter of public concern. *AOL, Inc. v. Malouf*, Case No. 05-13-01637-CV, 2015 WL 1535669, at \*3 (Tex. App.—Dallas Apr. 2, 2015, no pet. h.) (mem. op.); *see also Kinney v. BCG Attorney Search, Inc.*, Cause No. 03-12-00579-CV, 2014 WL 1432012, at \*5 (Tex. App.—Austin 2014, pet. denied) (holding that deciding whether a communication meets the statutory definition of the “exercise of the right of free speech” does not entail deciding whether the speech is true).

What *is* relevant is what the speech facially relates to. On its face, the Request is a communication connected to an issue relating to the government. The fact that the SFT argues that it does not actually qualify as a governmental body is of no consequence and cannot prevent the application of the Act.

*iii. The request was in connection to issues relating to economic and community well-being.*

The Request identified sixty-one (61) categories of documents for production. (*See generally* Request.) The categories<sup>3</sup> include any conflict of interest policies maintained by the SFT (Category No. 1), any whistleblower policies (Category No. 2), documents evidencing any misappropriation of SFT funds (Category No. 11), financial statements provided by the SFT to the City of Dallas (Category No. 15), documents regarding the sourcing, funding and disbursement of all scholarship monies to students (Category No. 19), documents regarding any contractual agreement with the City of Dallas Police Department (Category No. 33), documents regarding the procurement of seasonal jobs utilized by the SFT (Category No. 35), economic impact studies done by the SFT (Category No. 36), documents related to expenditures by the SFT in support of cultural facilities and community outreach programs (Category No. 40), and documents relating to the City of Dallas bond offerings (Category No. 45).

The Request seeking the disclosure of the above recited categories of documents is clearly connected to issues relating to economic and community well-being. The recent Texas Supreme Court decision of *Whisenhunt v. Lippincott*, Case No. 13-0926, 2015 WL 1967025 (Tex. April 24, 2015) is illustrative of the breadth<sup>4</sup> of the TCPA, and specifically what is considered relating to the well-being of the community.

---

<sup>3</sup> For brevity, the undersigned is paraphrasing the requested categories of documents.

<sup>4</sup> The TCPA is meant to be construed liberally. *See* TEX. CIV. PRAC. & REM. CODE § 27.011(b) (“This chapter shall be construed liberally to effectuate its purpose and intent fully.”)

In *Lippincott*, the plaintiff was a nurse anesthetist who filed a defamation lawsuit against two administrators of the surgery center he worked for. The basis of the plaintiff’s complaint was that the administrators had sent various emails alleging that the plaintiff had posed as a doctor, endangered patients for his own financial gain, and sexually harassed employees. *Lippincott*, 2015 WL 1967025 at \*1. After holding that private communications were not exempted from the Act, the Texas Supreme Court interpreted the allegations as whether the plaintiff had “properly provided medical services to patients.” *Lippincott*, 2015 WL 1967025 at \*2. The court then found that the communications were related to matters of public concern by reasoning that the communications related to health and safety, community well-being, and the provision of services in the marketplace. *See id.*

No great factual inquiry is needed here as the Request explicitly seeks disclosure of whistleblower policies, instances of misappropriation, economic impact studies, community outreach programs, scholarships given to members of the public, etc. These categories are without a doubt related to economic and community well-being.

***iv. The request was in connection to issues relating to a good, product, or service in the marketplace.***

Of course, the entirety of the Request is directed toward the SFT, which is principally known for putting on an annual fair in Dallas County, Texas. To the extent necessary, the Defendant requests that that Court take judicial notice of this fact pursuant to TEX. R. EVID. 201(b)(1). Further, pursuant to TEX. R. EVID. 201(b)(1) and (b)(2), the Defendant requests that the Court take judicial notice of the fact the SFT is not free, but charges a fee for its products and services—namely the annual State Fair of Texas. *See* press release entitled “State Fair of Texas Season Passes on Sale Now,” which may be accessed at <http://bigtex.com/state-fair-of-texas->

season-passes-on-sale-now/. As the Request is directed toward the SFT and is in regard to its business practices, the Request is in connection to an issue relating to a product or service in the marketplace. Further still, Category No. 46 explicitly seeks disclosures regarding the SFT's vendors. Again, it is inarguable that the Request is relating to goods, products, and services in the marketplace.

**C. The SFT's lawsuit is based on, relates to, and is in response to Riggs' right to petition.**

*i. The right to petition under the TCPA.*

The TCPA defines the exercise of the right to petition as meaning:

(A) a communication in or pertaining to:

(i) a judicial proceeding;

(ii) an official proceeding, other than a judicial proceeding, to administer the law;

(iii) an executive or other proceeding before a department of the state or federal government or a subdivision of the state or federal government;

(iv) a legislative proceeding, including a proceeding of a legislative committee;

(v) a proceeding before an entity that requires by rule that public notice be given before proceedings of that entity;

(vi) a proceeding in or before a managing board of an educational or eleemosynary institution supported directly or indirectly from public revenue;

(vii) a proceeding of the governing body of any political subdivision of this state;

(viii) a report of or debate and statements made in a proceeding described by Subparagraph (iii), (iv), (v), (vi), or (vii); or

(ix) a public meeting dealing with a public purpose, including statements and discussions at the meeting or other matters of public concern occurring at the meeting;

(B) a communication in connection with an issue under consideration or review by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding;

(C) a communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding;

(D) a communication reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding; and

(E) any other communication that falls within the protection of the right to petition government under the Constitution of the United States or the constitution of this state.

TEX. CIV. PRAC. & REM. CODE § 27.001(4).

*ii. The Request meets the TCPA's definition of the right to petition.*

Anticipating a potential dispute about whether the SFT qualified as a governmental body under the TPIA, the Request explicitly requested that the SFT either comply with the Request or seek an opinion from the Texas Attorney General on the applicability of the TPIA. (*See* Request at p. 2.) Riggs advised the SFT to seek an opinion from the Attorney General because the Government Code provides a detailed procedure for the resolution of these kind of disputes through the Attorney General. *See* TEX. GOV'T CODE. Ch. 552, Subchapter G. Indeed, the legislature *requires* the Attorney General to determine whether records must be disclosed pursuant to the TPIA. *See* TEX. GOV'T CODE § 552.306. Thus, the courts will give deference to the opinions of the Attorney General, including decisions regarding when private entities may qualify as a “governmental body” under the statute. *See Greater Houston P'ship v. Abbott*, 407 S.W.3d 776, 782-83 (Tex. App.—Austin 2013, pet. granted).

In Riggs' reply to the SFT's response, Riggs again advised the SFT of its ability to seek an opinion from the Attorney General should it dispute whether certain categories of documents were exempted from disclosure. (Reply at p. 1.) Nonetheless, six days later, the SFT sued Riggs.

It is clear that the present lawsuit is based on, relates to, and is in response to Riggs' request that the SFT seek an opinion by the Attorney General. In any event, the SFT has stated as such in its Original Petition:

The TPIA authorizes the Office of the Attorney General to issue rulings about certain disclosure exceptions under the TPIA. Because SFT is not a governmental body, it is not obligated to provide information under the TPIA or to follow the detailed procedures set out in the TPIA for seeking a ruling from the Office of the Attorney General that were designed for governmental bodies.

(Pl.'s Orig. Pet ¶ 14.) Of course, the foregoing is a meaningless non sequitur unless read as a direct response to Riggs' request that the SFT seek an opinion from the Attorney General.

Further, the Request is clearly covered by several of the Act's definitions of the exercise of the right to petition. First, the Request is a communication pertaining to "an official proceeding<sup>5</sup>, other than a judicial proceeding, to administer the law." TEX. CIV. PRAC. & REM. CODE § 27.001(4)(A)(ii). Second, the Request is a communication pertaining to "an executive or other proceeding before a department of the state or federal government or a subdivision of the state or federal government." TEX. CIV. PRAC. & REM. CODE § 27.001(4)(A)(iii). And third, the Request is "a communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding." TEX. CIV. PRAC. & REM. CODE § 27.001(4)(C). This last definition is

---

<sup>5</sup> An "official proceeding" is further defined as meaning "any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant. TEX. CIV. PRAC. & REM. CODE § 27.001(8).

especially appropriate as the Request explicitly invited a review by the Texas Attorney General of any dispute regarding the applicability of the TPIA to the SFT.

Putting aside the technical definitions of what constitutes the exercise of the right to petition under the TCPA, it is clear from the facts that this lawsuit has been designed as an attempt to circumvent any review by the Attorney General on whether the TPIA applies to the SFT. However, the TCPA does not so easily allow parties to frustrate another's right to petition a governmental body as the SFT attempts here.

**D. Riggs has shown by a preponderance of the evidence that it has a valid defense, specifically, that the SFT has violated TEX. GOV'T CODE § 552.325 by filing the present lawsuit.**

Riggs has shown above that the SFT's lawsuit falls under the purview of the Act. Therefore it is now the SFT's burden to make a prima facie case by clear and specific evidence of each essential element of its claim.

However, notwithstanding a claimant making the required prima facie case, a defendant is still entitled to dismissal should the defendant establish by a "preponderance of the evidence each essential element of a valid defense to the nonmovant's claim." TEX. CIV. PRAC. & REM. CODE § 27.005(d). As will be discussed below, Riggs has shown by a preponderance of the evidence that it has a valid defense, and therefore the SFT's lawsuit should be dismissed even if the SFT is able to bring forth clear and specific evidence of each essential element of its claim.

Lawsuits against requesters are expressly prohibited. Section 552.324 of the TPIA provides in part as follows:

(a) The only suit a governmental body may file seeking to withhold information from a requestor is a suit that:

(1) is filed in a Travis County district court *against the attorney general in accordance with Section 552.325*; and

(2) seeks declaratory relief from compliance with a decision by the attorney general issued under Subchapter G.

TEX. GOV'T CODE § 552.324(a) (emphasis added).

Section 552.325 of the TPIA provides in part as follows:

*A governmental body, officer for public information, or other person or entity that files a suit seeking to withhold information from a requestor may not file suit against the person requesting the information.* The requestor is entitled to intervene in the suit.

TEX. GOV'T CODE § 552.325(a) (emphasis added).

The policy behind this prohibition is plainly to prohibit retaliation and a chilling effect against those who exercise their rights under the TPIA. *See Lake Travis Independent School Dist. v. Lovelace*, 243 S.W.3d 244, 250 (Tex. App.-Austin 2007, no pet.).

In *Lovelace*, the school district filed a lawsuit against parents the district contended had simply made so many TPIA requests that their conduct was an abuse of process and a common law nuisance. The parents filed a plea to the jurisdiction, contending that the express language of the TPIA barred the district's lawsuit and deprived the trial court of jurisdiction. The trial court and the Third Court of Appeals agreed with the parents:

[E]ven construing the pleadings in favor of the District, we are constrained to find that the TPIA's prohibition against governmental bodies suing requestors of public information in section 522.324 bars the District from bringing this suit.

*Lovelace*, 243 S.W.3d at 251. Similar considerations apply here.

The fact that the State Fair contends that is it not a "governmental body" does not change the prohibition. Section 552.325(a) includes the following in the prohibition against suing requestors: "or *other person or entity* that files a suit seeking to withhold information from a requestor may not file suit against the person requesting the information." TEX. GOV'T CODE

§ 552.325(a) (emphasis added). In this manner, the TPIA encompasses the situation in which a “private” entity seeks to withhold information from a requestor on the basis that that the entity contends that it is not subject to the TPIA.

#### **IV. Damages & Costs**

If the Court grants Riggs’ motion to dismiss, the Court must award it court costs, reasonable attorney’s fees, and any other expenses incurred in defending against the legal action. TEX. CIV. PRAC. & REM. CODE § 27.009(a)(1). Further, the Court must also award Riggs sanctions against the SFT in an amount which is sufficient to deter the SFT from bringing similar actions described by the Act. TEX. CIV. PRAC. & REM. CODE § 27.009(a)(2).

#### **V. Evidence**

The Defendant relies upon the following evidence:

**Exhibit D-1** TPIA Request dated March 20, 2015

**Exhibit D-2** Response from the SFT dated April 7, 2015

**Exhibit D-3** Reply from Riggs to the SFT dated April 15, 2015

**Exhibit D-4** Plaintiff’s Original Petition

#### **VI. Conclusion & Prayer**

For the forgoing reasons, the Defendant’s Motion to Dismiss Pursuant to the Texas Citizens Participation Act should be granted. The Defendant requests the Court sign an interlocutory order granting its motion to dismiss, granting it its court costs, attorney’s fees, and other expenses incurred in defending against this lawsuit, and further award the Defendant sanctions. Defendant further requests that the Court set an evidentiary hearing so that evidence may be heard regarding the amount of the Defendant’s costs and reasonable attorney’s fees incurred, as well as what amount would constitute a sufficient sanction under the circumstances.

Respectfully submitted,

By: /s/ Bill Aleshire

Bill Aleshire – Attorney in Charge

SBN: 24031810

AleshireLAW, P.C.

700 Lavaca, Suite 1400

Austin, Texas 78701

Tel. (512) 320-9155

Fax. (512) 320-9156

**THE PETTIT LAW FIRM**

By: /s/ Julie Pettit

Julie Pettit

SBN: 24065971

jpettit@pettitfirm.com

David B. Urteago

SBN: 24079493

durteago@pettitfirm.com

3710 Rawlins, Suite 1050

Dallas, TX 75219

Tel. (214) 329-0151

Fax. (214) 329-4076

**ATTORNEYS FOR RIGGS & RAY, P.C.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon the following *via the electronic filing manager* on June 29, 2015:

Bryan P. Neal  
James B. Harris  
Stephen F. Fink  
THOMPSON & KNIGHT  
One Arts Plaza  
1722 Routh Street, Suite 1500  
Dallas, Texas 75201-2633  
(214) 969-1762 (direct)  
(214) 969-1751 (fax)  
bryan.Neal@tklaw.com  
james.harris@tklaw.com  
stephen.fink@tklaw.com  
**Attorneys for State Fair of Texas**

Lynne Liberato  
Polly Graham Fohn  
HAYNES AND BOONE LLP  
1221 McKinney Street, Suite 2100  
Houston, TX 77010  
(713) 457-2017  
(713) 236-5538  
lynne.liberator@haynesboone.com  
polly.fohn@haynesboone.com  
**Attorneys for State Fair of Texas**

Robert B. Smith  
3838 Oak Lawn Avenue, Suite 1220  
Dallas, Texas 75219  
(214) 522-5571  
(214) 522-5009  
robert@smith-firm.com  
**Attorney for State Fair of Texas**

/s/ Julie Pettit  
Counsel for Defendant

**Jennifer S. Riggs**  
Certified in Administrative Law  
Texas Board of Legal Specialization  
jriggs@r-alaw.com

**Jason Ray**  
Certified in Administrative Law  
Texas Board of Legal Specialization  
jray@r-alaw.com

**RIGGS & RAY**  
A PROFESSIONAL CORPORATION  
ATTORNEYS AND COUNSELORS

700 LAVACA, SUITE 920  
AUSTIN, TEXAS 78701  
512 457-9806 TELEPHONE  
512 457-9066 FACSIMILE

**Franklin Hopkins**  
Certified in Administrative Law  
Texas Board of Legal Specialization  
fhopkins@r-alaw.com

March 20, 2015

**Via CMRRR 7014 2870 0001 3881 3739  
and First Class Mail**

State Fair of Texas, Inc.  
c/o Robert B. Smith, Registered Agent  
3838 Oak Lawn Ave.  
Suite 1220  
Dallas, Texas 75219

State Fair of Texas, Inc.  
Board of Directors (see attached service list)

Re: Open Records Request to the State Fair of Texas, Inc. (SFOT)

TO THE STATE FAIR OF TEXAS, by and through its Registered Agent, and  
TO THE BOARD OF DIRECTORS OF THE STATE FAIR OF TEXAS

Pursuant to the Texas Public Information Act (TPIA), chapter 552 of the Texas Government Code, §§552.001 *et seq.*, on behalf of a client, I hereby request copies of the information identified below.

The TPIA applies to governmental bodies, as defined in the TPIA. The definition includes the following:

(1) "Governmental body":

(A) means:

(xii) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency *that spends or that is supported in whole or in part by public funds....*"

Tex. Gov't Code § 552.003(1)(A)(xii); *see, e.g., Greater Houston P'ship v. Abbott*, 407 S.W.3d 776, 783 (Tex. App.—Austin 2013, pet. filed); *Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 360-362 (Tex. App.—Waco 1998, pet. denied);

For example, in Tex. Att'y Gen. ORD No. 602 (1992), the Attorney General addressed the applicability of the TPIA to the Dallas Museum of Art. The museum was a private, nonprofit corporation that had contracted with the City of Dallas to preserve an art collection owned by the city and to maintain, operate, and manage an art museum. *See* ORD No. 602, at 1-2. The contract



required that the city effectively support the museum by maintaining the museum building, paying for utility service, and providing funds for other costs of operating the museum. *Id.* at 2. The Attorney General noted that an entity that receives public funds is a governmental body under the Act, unless the entity's relationship with the governmental body imposes "a specific and definite obligation ... to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser." *Id.* at 4. The Attorney General found that the very nature of the services the museum provided to the city could not be known, specific, or measurable. *Id.* at 5. The Attorney General concluded that the city provided general support to the museum's facilities and operation, making the museum a governmental body to the extent it received the city's financial support. *Id.* Similar considerations apply here.

More recently, Attorney General Abbott reached a similar result in the decision that gave rise to the *Greater Houston Partnership* case. The Attorney General has found that an agency relationship exists when the private entity shares common purposes and objectives with a city. *See Greater Houston P'ship*, 407 S.W.3d at 785; Open Records Decision No. 621 at 9 (1993). The current Attorney General has not departed from that position. *See, e.g.*, Tex. Att'y Gen. OR2015-04130 (March 3, 2015).

From a procedural standpoint, the position of the Attorney General is that even private entities must submit a request for a decision on the applicability of the TPIA. *See, e.g.*, Tex. Atty. Gen. Op. OR2014-12857, 2014 WL 5149989 (Tex. A.G.) (information held by Crockett Area Chamber of Commerce deemed public because request not timely submitted on applicability of TPIA).

For these reasons, we request that you provide the following information or seek an opinion from the Attorney General on the applicability of the TPIA.

Unless otherwise stated, these requests encompass documents from January 1, 2005 to the present:

1. All minutes of meetings of the Board of Directors of the SFOT for the period set out above;
2. All minutes of the meetings of the Executive Committee of the SFOT for the period set out above;
3. All documents reflecting disclosures of conflicts of interest of any member of the SFOT Board of Directors, including all disclosures signed by the Director in question for the time period set out above;
4. All versions of any document retention program or policy in effect at the SFOT for the time period set forth above.

5. All conflict of interest policies maintained by the SFOT for the previous 10 years, including all communications, both with the board and within management, regarding the implementation, violation, or amendment of such policies.
6. All whistleblower policies maintained by the SFOT for the previous 10 years, including all communications, both with the board and within management, regarding the implementation, violation or amendment of such policies.
7. All public information requests received by the SFOT for the previous 10 years and the SFOT's complete response to each, along with any internal documents reflecting the mode and method of responding to each request.
8. All documents and correspondence regarding litigation (whether threatened or filed) against SFOT or that related to the SFOT or any interest of the SFOT in any regard.
9. The check register (digital files from QuickBooks or other software utilized by SFOT are acceptable) indicating the date of all receipts and expenditures, the payee/payor, amount, and the reason for expenditure or source of income, for the time period set out above. This request is for all bank accounts (open or closed) of SFOT for the time period set out above.
10. All bank and investment company statements (digital files are preferable) for the time period set out above.
11. All documents and communications reflecting or regarding allegations of the misappropriation of SFOT funds during the time period stated above, including documents regarding any investigations of such allegations and the findings and conclusions of the investigations.
12. All documents regarding the internal auditing procedures of the SFOT, including all documents and communications reflecting the implementation or amendment of such procedures.
13. All documents reflecting or regarding the findings and conclusions of internal audits performed by the SFOT.
14. All documents and communications regarding the purchase of insurance by or for the SFOT for the period set forth above.
15. All supporting documents reflecting financial statements provided by the SFOT to the City of Dallas for the past five (5) years, as described in Section 13 of the Fair Park Contract between the City of Dallas and the SFOT, approved August 28, 2002 and entered into on May 21, 2003 (the "Contract").

16. Documents reflecting payments into and expenditures from the SFOT's Reserve Fund, as defined in Section 9.02 of the Contract, and communications by and between the SFOT and any third party, including, but not limited to, representatives of the City of Dallas, related to the Reserve Fund.

17. Documents reflecting any accountings of SFOT's Excess Revenues as defined in Section 11.01 of the Contract.

18. Documents or correspondence (whether internal or with third parties) reflecting any audit conducted by any person or entity of any legal bills incurred and/or paid by the SFOT.

19. All documents and communications (whether internal or with third parties) regarding the sourcing, funding and disbursement of all scholarship monies and grants to third parties constituting the amounts listed on Part 1, Line 13 of the last ten IRS Form 990s filed by the SFOT, including but not limited to information provided to youth participants in the livestock program regarding the SFOT's percentage of their sales price received at auction and all expenses of the SFOT in the application process for students who received scholarship proceeds.

20. All grant applications (whether private or governmental) and communications (whether internal or with third parties) related to said applications submitted during the time period set forth above.

21. All documents regarding any endowment held for the benefit of the SFOT, the account information for each such endowment, the nature of the funds, securities or other property which make up the endowment and all communications (whether internal or with third parties) regarding each such endowment for the period set forth above.

22. All documents and correspondence reflecting the operating budget or revenues derived from the SFOT concession at Love Field as well as all correspondence reflecting the bid and/or application submitted to the City of Dallas/Love Field for this concession.

23. All documents and communication/correspondence related to all inquiries and/or audits from or by the Texas State Comptroller and the Internal Revenue Service for the previous 10 years.

24. All applications (with appropriate redactions for social security numbers and other protected information) for scholarships that were rejected for any reason for the previous 10 years, including all rejection letters and internal communication relating to the decision to reject each applicant or any group of applicants.

25. All documents and correspondence regarding the termination/cessation of employment of Errol McKoy, including but not limited to, any severance agreement, post-employment consulting agreement and payments of any kind to McKoy.

26. All documents and correspondence regarding the compensation of Errol McKoy, including but not limited to all payments made to him, all correspondence by and between the board of directors regarding his compensation, fringe benefits, retirement plan, deferred compensation, severance and post-employment compensation, and all communication from any source to any employee or board member of the SFOT regarding his compensation.

27. All documents and correspondence regarding the compensation of Lee D. Winton, including but not limited to all payments made to him, all correspondence by and between the board of directors regarding his compensation, fringe benefits, retirement plan, deferred compensation, severance and post-employment compensation, and all communication from any source to any employee or board member of the SFOT regarding his compensation.

28. All documents and correspondence regarding the compensation of Mitchell Glieber, including but not limited to all payments made to him, all correspondence by and between the board of directors regarding his compensation, fringe benefits, retirement plan, deferred compensation, severance and post-employment compensation, and all communication from any source to any employee or board member of the SFOT regarding his compensation.

29. Documents and communications (whether internal or with third parties) related to any recommendations by the President of the SFOT for the salaries for the SFOT employees, as well as the Finance/Audit Committee's review of such recommendations.

30. Documents and correspondence (whether internal or with third parties) reflecting any legal billing statements and correspondence to third parties regarding legal work performed by the SFOT's General Counsel, his law firm and/or any other outside firms engaged to represent the SFOT for the time period set forth above.

31. Internal documents and/or correspondence (whether internal or with third parties) regarding obtaining legal and/or other consulting/advisory services, including, but not limited to, the bidding process, if any, for legal or consulting services utilized by the SFOT, including but not limited to:

- a. Copies of all consulting/advisory agreements;
- b. Copies of all engagement letters with all attorneys retained or paid by the SFOT;
- c. Invoices from any and all consultants, advisors and attorneys;
- d. Payments made under all consulting/advisory and legal services agreements.

32. All documents and communications regarding the cost, nature and vendor for any and all employee benefits provided to employees of the SFOT as quantified on Lines 8 and 9, Part IX of the 2013 SFOT IRS Form 990 and the previous nine (9) 990's filed by the SFOT.

33. All documents and correspondence reflecting the contractual arrangement, payment, and tax treatment of any agreement with the City of Dallas Police Department or any of its officers for the time period set forth above.
34. All documents and communication regarding any benefit conferred upon SFOT Board members (both current and former) in each of the last ten (10) years, including but not limited to:
  - a. Complimentary or discounted tickets to any event sponsored by the SFOT;
  - b. Complimentary parking during any event sponsored by the SFOT;
  - c. Travel expenses;
  - d. All correspondence (both internal and with third parties) regarding the decision to not issue an IRS Form 1099 or to report the value of such perquisites received by the Board Members;
  - e. All expense reimbursements submitted by each board member and documents evidencing payment or rejection of those expenses.
35. All documents regarding the procurement, payment, commissions generated and communications regarding the seasonal jobs utilized by the SFOT.
36. All "economic impact studies" of any kind performed on behalf of the SFOT or on behalf of any consultant retained and/or paid in whole or in part by the SFOT for the time period set out above.
37. Communications by and between any employee of the SFOT and any third party, including, but not limited to the City of Dallas (or any of its constituent parts) regarding the following areas of inquiry for the period set forth above:
  - a. The existing lease held by the SFOT;
  - b. The operation of the SFOT; and
  - c. The contracts between the City of Dallas and the SFOT and any amendments of same.
38. Documents and communications (whether internal or with third parties) related to the "Long Range Development Plan" defined in Section 1.15 of the Contract.
39. Documents and communications (whether internal or with third parties) related to the schedules required to be presented by the SFOT to Dallas' Park and Recreation Department pursuant to Section 11.02 of the Contract reflecting "(a) major maintenance and capital expenditure projects which the SFOT will undertake for the given year; and (b) allocation of anticipated expenditures by the SFOT for cultural facilities and community outreach programs."
40. Documents and communications (whether internal or with third parties) related to expenditures by the SFOT in support of cultural facilities and community outreach programs as described in Section 8.06 of the Contract.

41. Documents and communications (whether internal or with third parties) related to the schedules submitted by the SFOT to Dallas' Park and Recreation Department (or any other Dallas City department) for major maintenance and capital expenditure projects as well as the City's approval of those schedules.
42. All documents and correspondence (whether internal or with third parties) regarding the planning, projected costs and revenues, actual revenue and costs, marketing, third party consulting, termination, and any other matters related to the "Summer Adventures' program/event.
43. All documents and communication (whether internal or with third parties) regarding the provision of any construction or rehabilitation services for any third party outside of Fair Park, including but not limited to:
  - a. The use of paving equipment and/or materials for the repaving of properties outside Fair Park;
  - b. The payment to any subcontractor for paving equipment and/or materials for the repaving of properties outside Fair Park;
  - c. Any agreement with a SFOT subcontractor to provide paving services on properties outside Fair Park as a contract term, "rebate," or condition of receiving a contract on Fair Park property.
44. All documents regarding "yard parking" on adjacent private property during the course of the State Fair, including, but not limited to:
  - a. Communication with the City of Dallas regarding the issuance of permits;
  - b. Communications with third parties requesting parking permits;
  - c. Parking permits issued by the City of Dallas to SFOT-owned properties
  - d. Documents reflecting all parking revenue from such lots and to whom paid.
45. All documents and communication relating in any way to the City of Dallas bond offerings during the period reflected above, including, but not limited to:
  - a. Documents and communication regarding the rehabilitation/upgrade to the Cotton Bowl;
  - b. Documents and communication regarding any other proposed project to be paid for with City of Dallas bond proceeds.
46. All documents and communication regarding the vendors of the SFOT, including but not limited to:
  - a. Agreements with the vendors;
  - b. Payments from the vendors;
  - c. All agreements regarding the sale of non-food merchandise during the State Fair, including but not limited to:
    - (1) Spas
    - (2) Outdoor grills
    - (3) Furniture
    - (4) Sealed food products

- (5) Clothing
- (6) Arts and Crafts
- (7) Perfumes
- (8) Spices

d. All documents reflecting the annual physical placement of vendors during the State Fair, including but not limited to:

- (1) The process of awarding contracts to and location of vendors;
- (2) Whether there is a bid procedure and if so, documents regarding the letting and acceptance of the bids;
- (3) Documents reflecting the ownership (in whole or in part) by any employee, former employee, director or former director of the SFOT of any vendor for the previous 10 years.

47. All documents, reviews, reports and correspondence (emails and hard copy) regarding the "national accounting and consulting firm" and the "previous compensation review" referenced in Form 990, Part VI, Section B, Line 15 of the SFOT 2013 IRS Form 990 for the period set forth above.

48. All documents and communications (whether internal or with third parties) regarding all real estate owned by the SFOT as set forth in Part VI of the SFOT 2013 IRS Form 990, including, but not limited to, correspondence regarding the acquisition of each property, record of votes taken (if any) authorizing the purchasing of each parcel of real estate, rentals received from each parcel (if any), board agenda items for each parcel purchased and/or sold provided to board members, closing statements for each property acquired and real estate commission agreements for any real estate agent or broker receiving a commission on any of the sales, any "finder's fee" documents or agreements related to the locating or purchasing of any property, together with any documents and communication concerning possible uses or plans for any such real estate.

49. All documents and communications (whether internal or with third parties) regarding any and all details related to the answer of YES to Question 28 found on Part IV of the 2013 SFOT IRS Form 990.

50. All documents and communications (whether internal or with third parties) regarding the specific items, values and negotiations surrounding all items related to SFOT's YES answer to Question 7a and 7b within Part V of the last 10 IRS Form 990's filed by the SFOT.

51. All documents and communications (whether internal or with third parties) regarding the names, relationships, approvals by the Board and conflict of interest statements related to the SFOT's YES answer to Question 2, Section A, Part VI of the SFOT 2013 IRS Form 990 and the previous 9 IRS Forms filed by the SFOT.

52. All documents and communications (whether internal or with third parties) regarding all items related to the SFOT's YES answer to Question 15a and 15b, Part VI of the last 10 IRS Form 990's filed by the SFOT

53. All documents and communications (whether internal or with third parties) regarding each contract set forth in Section B, Part VI of the 2013 SFOT IRS Form 990 and the previous 9 Form 990's filed by the SFOT, including but not limited to the following:

- a. Copies of agreements;
- b. Copies of billings;
- c. Copies of payments made;
- d. Any documents reflecting a conflict of interest or possible conflict of interest with any of the independent contractors;
- e. Bids for the products and/or services provided by each company;
- f. Requests for Proposals for the products and/or services provided by each contractor;
- g. Documents reflecting any due diligence conducted on each company and/or its principals;
- h. Documents reflecting whether each company was certified as a Historically Underutilized Business, a Minority Owned Business or Women-Owned Business Enterprise;
- i. Documents reflecting the existence of tax liens (federal or state) against any such company.

54. All documents and communications (whether internal or with third parties) reflecting the source of "fundraising events" and "other contributions" reflected on Line 1c and 1f, Part VIII of the SFOT 2013 Form 990 and the previous nine (9) 990's filed by the SFOT, including but not limited to:

- a. Documents and communications reflecting fundraising for the reconstruction of Big Tex due to the SFOT underinsuring for the destruction of same;
- b. Communications of any kind with the source of the revenue described above relating to the use of funds by the SFOT in the areas of:
  - (1) Executive Compensation;
  - (2) Purchase of real estate with excess SFOT funds;
  - (3) Mode and method of retaining percentages of livestock sales by Texas youth.

55. All documents reflecting the source of 'gross rents' set forth on Line 7, Part VIII of the 2013 SFOT IRS Form 990.

56. All documents and communications regarding the source of all 'management fees' set out on Line 11a of the 2013 SFOT IRS Form 990 and the previous nine (9) 990's filed by the SFOT, including, but not limited to:

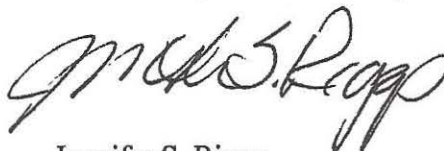
- a. Items reflecting whether the source of any 'management fees' was a member of the board of directors, former member of the board of directors or from a company controlled in whole or in part by any current or former employee of the SFOT;
  - b. Copies of all 1099's issued by the SFOT to any source of the management fees referenced above.
57. All documents and communications regarding the source of all 'office expenses' set out on Line 13 of the 2013 SFOT IRS Form 990 and the previous nine (9) 990's filed by the SFOT.
58. All documents and communications regarding the source of all "special attractions" costs set out on Line 24a of the 2013 SFOT IRS Form 990.
59. All documents and correspondence reflecting the provider and the repository (bank/fund/money manager) of all funds and/or securities reflected on Line 2, Part X of the 2013 SFOT IRS Form 990 and the previous nine (9) 990's filed by the SFOT.
60. All documents and communication regarding any and all aspects of the agreements or understandings reflected in the SFOT's YES answer to Line 6a, Part 1 on Schedule 3 of the 2013 SFOT IRS Form 990 and any of the previous nine (9) 990's filed by the SFOT with a YES answer.
61. All documents and communication related to the \$3,444,203 accrued liability noted as "LIVESTOCK BUILDING CENTER CONT" contained on Schedule D, Part X of the 2013 SFOT IRS Form 990.

By using the term "documents" and "communications" we request all public information, as defined in section 552.002 of the TPIA. When the information exists in electronic form, in the interest of saving time and expense, we request it in its native format, as maintained by the SFOT.

Pursuant to the TPIA, we agree to pay reasonable charges incurred for copying of this requested public information. If copying costs are expected to exceed \$150.00, please email me in advance for approval.

Please email me with any questions regarding the scope of the request and/or if you need further clarification.

Sincerely,



Jennifer S. Riggs



# THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

ONE ARTS PLAZA  
1722 ROUTH STREET • SUITE 1500  
DALLAS, TEXAS 75201-2633  
(214) 969-1700  
FAX (214) 969-1751  
www.tklaw.com

AUSTIN  
DALLAS  
DETROIT  
FORT WORTH  
HOUSTON  
LOS ANGELES  
NEW YORK  
SAN FRANCISCO

ALGIERS  
LONDON  
MONTERREY  
PARIS

TELEPHONE: (214) 969-1762  
FAX: Bryan.Neal@tklaw.com

Bryan P. Neal

April 7, 2015

**BY FAX: (512) 457-9066 and  
CERTIFIED MAIL NO: 7013 3020 0000 8383 9113**

Jennifer S. Riggs, Esq.  
Riggs & Ray  
700 Lavaca, Suite 920  
Austin, Texas 78701

*Re: State Fair of Texas/Texas Public Information Act Request ("TPIA")*

Dear Ms. Riggs:

I represent State Fair of Texas ("SFOT") with respect to the subject of your March 20, 2015 letter to SFOT in care of Robert B. Smith.

We are reviewing and considering your request under the TPIA. Without conceding that SFOT is a governmental body, I am, pursuant to TPIA § 552.222(b), writing to ask for clarification of several aspects of the request and, relatedly, ways in which the request might be narrowed.

Specifically, Request No. 8 seeks all "documents and correspondence regarding litigation (whether threatened or filed) against SFOT or that related to the SFOT or any interest of the SFOT in any regard." Request No. 30 seeks, among other things, any "legal billing statements" of SFOT's attorneys. Further, there are numerous requests that seek documents and correspondence or communications "regarding" or "relating to" (or "related to" or "relating in any way to") a given topic. I am referring to Request Nos. 5, 6, 8, 11-14, 16, 19-21, 23-32, 34-35, 37-54, 56-61. By any of the request numbers referenced in this paragraph, or any of the other request numbers, do you intend to seek information falling within the attorney-client privilege as set out in Texas Rule of Evidence 503 or "work product" as set out in Texas Rule of Civil Procedure 192.5? If so, will you narrow the request to exclude that information?

Separately, please clarify what is meant by the language "or that related to the SFOT or any interest of the SFOT in any regard" in Request No. 8.

In addition, as stated above, the terms "regarding," "relating to" and similar terms are used at numerous places in the request. Likewise, the phrase "including but not limited to" appears in many of the same places (Request Nos. 16, 19, 25-28, 31, 37, 44, 45, 46, 48, 53, 56). Each of those terms is so broad as to not identify the information in a manner that allows SFOT

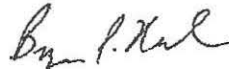


Jennifer S. Riggs, Esq.  
Page 2  
April 7, 2015

to know with reasonable certainty what is being requested. Please clarify or consider modifying the request to narrow the scope.

As I am sure you know, if by the 61st day after the date of this letter I have not received a written response from you, your request will be considered to have been withdrawn.

Sincerely,



Bryan P. Neal

BN/cls

c: Robert B. Smith, Esq. *(by email)*

078452 000008 14619832.2

**THOMPSON & KNIGHT LLP**

ATTORNEYS AND COUNSELORS

ONE ARTS PLAZA  
1722 ROUTH STREET · SUITE 1500  
DALLAS, TEXAS 75201-2633  
(214) 969-1700  
FAX (214) 969-1751  
www.tklaw.com

DIRECT DIAL: (214) 969-1762  
EMAIL: Bryan.Neal@tklaw.com  
Bryan P. Neal



**FACSIMILE COVER LETTER**

**TO:** Jennifer S. Riggs  
**FAX NO.:** (512) 457-9066  
**FROM:** Bryan P. Neal  
**SUBJECT:** *Re: State Fair of Texas/Texas Public Information Act Request ("TPIA")*  
**DATE:** April 7, 2015  
**CLIENT/FILE#** 078452.000008

**PAGES:** 3  
(including cover sheet)

**Jennifer S. Riggs**  
Certified in Administrative Law  
Texas Board of Legal Specialization  
jriggs@r-alaw.com

**Jason Ray**  
Certified in Administrative Law  
Texas Board of Legal Specialization  
jray@r-alaw.com

**RIGGS & RAY**  
A PROFESSIONAL CORPORATION  
ATTORNEYS AND COUNSELORS

700 LAVACA, SUITE 920  
AUSTIN, TEXAS 78701  
512 457-9806 TELEPHONE  
512 457-9066 FACSIMILE

**Franklin Hopkins**  
Certified in Administrative Law  
Texas Board of Legal Specialization  
fhopkins@r-alaw.com

April 15, 2015

**Via email (Bryan.Neal@tklaw.com)  
and First Class Mail**

State Fair of Texas, Inc.  
c/o Bryan P. Neal  
Thompson & Knight LLP  
One Arts Plaza  
1722 Routh Street, Suite 1500  
Dallas, Texas 75201-1751

Re: Open Records Request to the State Fair of Texas, Inc. (SFOT)

Dear Mr. Neal,

This is to follow up on your letter of April 7, 2015. Without agreeing that the request at issue requires any clarification or narrowing, thus extending the deadlines to respond, please see the responses below. In addition, we request that you meet the applicable deadlines under the Texas Public Information Act (TPIA), chapter 552 of the Texas Government Code, §§552.001 *et seq.*, with respect to the other items requested.

**ATTORNEY CLIENT PRIVILEGE**

In regard to Request Nos. 5-6, 8, 11-14, 16, 19-21, 23-32, 34-35, 37-54, and 56-61, you ask whether I will “narrow the request[s] to exclude” information deemed privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5. As you are aware, if a governmental body believes that information responsive to a TPIA request is protected by the attorney-client or work product privileges, it may seek an opinion from the Attorney General exempting such information from disclosure. Section 552.107(1) protects information that falls within the attorney-client privilege.

Although the *purpose* of the request is not to seek information that is protected under section 552.107, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege. *See* Tex. Att’y Gen. ORD No. 676(2002). The TPIA process ensures oversight of the governmental body’s privilege determinations. I understand that, in the case of the State Fair, such privilege determinations are complicated by the State Fair’s practice of retaining State Fair board members as “general counsel” for the corporation. That fact complicates the task of tailoring a TPIA request to avoid capturing potentially privileged information.



Further, the attorney client privilege belongs to the client. *See* Tex. State Bar, Rules of Professional Conduct, Rule 1.05(c)(2) (client consent to disclosure). In the case of an entity, that means the board of the State Fair, acting as a collegial entity. *See* Tex. State Bar, Rules of Professional Conduct, Rule 1.12. As a result, it is for the State Fair board to decide, with your counsel of course, what is necessary to withhold to protect the interests of the State Fair. A governmental body may voluntarily waive the attorney-client privilege. Tex. Att'y Gen. ORD-676, \*10-11 (2002); Tex. Att'y Gen. OR2014-06169 (April 14, 2014) (citing *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644, 649 (Tex. 1986); *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 554 (Tex. 1990); and *In re Bexar County Criminal Dist. Attorney's Office*, 224 S.W.3d 182 (Tex. 2007)). In the interest of transparency, the State Fair board may decide that certain communications should be disclosed.

For these reasons, I cannot agree to limit the request in a manner that would permit the State Fair to withhold information that its counsel or staff *unilaterally* alleges to be privileged.

#### REQUEST NO. 8

You ask that I "clarify" Request No. 8. Applying the ordinary meaning and usage of the terms contained in Request No. 8, I do not agree that clarification is required. Nonetheless, in the spirit of compromise and to assist in your search for responsive information, Request No. 8 encompasses information pertaining to lawsuits in which (1) the State Fair was a named party, (2) the State Fair was designated a responsible third-party, or (3) executive officers of the State Fair were named as a party or as a person with knowledge of relevant facts with respect to matters within the scope of their service as executive officers.

#### "OVERBROAD" REQUESTS

Finally, in regard to Request Nos. 16, 19, 25-28, 31, 37, 44-46, 48, 53, and 56, you ask that I "clarify" or "narrow" the requests because you assert that the requests are "so broad as to not identify the information in a manner that allows SFOT to know with reasonable certainty what is being requested." It appears, however, that you object to the volume of information that may be responsive to the requests, not that you cannot determine what information is at issue. Unlike discovery in civil litigation, however, there is no objection or exemption for "overbroad" requests under the TPIA. In fact, since the reasons a requestor seeks information are irrelevant, there is no concept that requested information has to be relevant to anything. The only question is whether responsive information exists and whether it falls within any of the TPIA's exceptions.

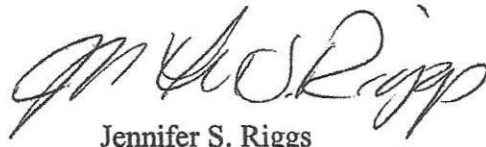
I have carefully reviewed each of the requests cited in your letter, and I believe that the requests contain more than sufficient detail to allow the State Fair to determine what information is being requested. If in doubt, you should construe the requests in their broadest possible terms, taking into account the format in which the documents are maintained at the State Fair. If, in the process of gathering responsive information, you have specific questions regarding certain requests, or desire assistance regarding search criteria/terms for electronic searches, I will be happy

State Fair of Texas, Inc.  
April 15, 2015  
Page 3 of 3

to work with you so that responsive public information may be identified and disclosed in the most efficient manner possible.

Please email me with any questions regarding the scope of the request and/or if you need further clarification.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer S. Riggs". The signature is written in a cursive style with a large, stylized "J" and "R".

Jennifer S. Riggs

Tonya Pointer

NO. DC-15-04484

STATE FAIR OF TEXAS	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	OF DALLAS COUNTY, TEXAS
v.	§	
	§	
RIGGS & RAY, P.C.	§	
	§	
Defendant.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION**

Plaintiff State Fair of Texas (“SFT” or “Plaintiff”) files this original petition seeking a judgment declaring its rights, status, and legal relations with regard to Defendant Riggs & Ray P.C. (“Riggs & Ray” or “Defendant”) and the applicability to SFT of the Texas Public Information Act. Defendant claims entitlement to disclosure of a broad array of information from SFT under the Texas Public Information Act. The Act applies only to governmental bodies. Because SFT is a private corporation, not a governmental body, it has no obligation to provide information in response Defendant’s request.

**DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 3 of the Texas Rules of Civil Procedure.

**PARTIES**

2. Plaintiff State Fair of Texas is a private nonprofit corporation in the State of Texas. Its principal offices and operations are in Dallas County, Texas.

3. Defendant Riggs & Ray, P.C. is a domestic professional corporation with its principal place of business at 700 Lavaca, Suite 920, Austin, Texas 78701. Defendant may be served with citation through its registered agent, Jennifer S. Riggs, at 700 Lavaca, Suite 920, Austin, Texas 78701.

## **JURISDICTION AND VENUE**

4. The Court has jurisdiction over this action under Texas Civil Practice and Remedies Code § 37.003(a). Plaintiff seeks monetary relief of \$100,000 or less and non-monetary relief. The monetary and other relief sought are within the jurisdictional limits of the court. Venue is proper in Dallas County where a substantial part of the events giving rise to SFT's cause of action occurred.

## **BACKGROUND**

5. SFT is a private non-profit corporation.

6. SFT is not a governmental entity and has never held itself out as a governmental entity. SFT has never invoked governmental immunity under state law and is not a "state actor" for federal constitutional purposes.

7. SFT is not a "governmental body" under the Texas Public Information Act ("TPIA"). Neither SFT nor any part, section, or portion of SFT spends public funds or is supported in whole or in part by public funds.

8. SFT operates the annual State Fair of Texas exposition in Dallas (the "Fair") and has done so for many years. The Fair occurs on the grounds of Fair Park in Dallas. SFT has a contract with the City of Dallas (the "City") under which SFT leases portions of Fair Park for SFT's offices and for the operation of the Fair. SFT does not receive any money from the City. To the contrary, under its contract with the City, SFT pays substantial amounts for the leased property. SFT also pays other amounts to the City in connection with the contract.

9. Defendant is a law firm based in Austin, Texas. On or about March 20, 2015, Defendant sent a letter to SFT seeking information from SFT pursuant to the TPIA (the "TPIA Request"). The TPIA Request states that Defendant is requesting information on behalf of a client that is not identified. Nevertheless, the TPIA Request and related correspondence were

sent under Defendant's letterhead and signed by a partner of Defendant. Therefore, it is Defendant that is requesting the information sought in the TPIA Request and contending that SFT is covered by the TPIA.

10. In the TPIA Request, Defendant alleges that SFT is a "governmental body" as defined by the TPIA and therefore is subject to the TPIA's substantive and procedural requirements.

11. Because SFT is not a governmental body under the TPIA, SFT is not a proper recipient of a request under the TPIA or otherwise subject to the TPIA's substantive and procedural requirements.

12. The TPIA Request from Defendant contained sixty-one (61) separately numbered items, many with subparts, seeking a broad array of information from SFT. Many of the individual items in the TPIA Request are imprecise or are worded so broadly that it is impossible to determine the nature and scope of the information sought.

13. Although it is not a governmental body and therefore is not legally obligated to provide any information pursuant to the TPIA Request, SFT asked Defendant to clarify the TPIA Request. Defendant's response to SFT's request was evasive, largely nonresponsive, and incomplete. Defendant did, however, continue to maintain that SFT is a governmental body subject to the TPIA. Accordingly, SFT brings this action for a declaration that SFT is not a governmental body subject to the TPIA.

14. Under the TPIA, a governmental body must produce certain information upon request. The TPIA authorizes the Office of the Attorney General to issue rulings about certain disclosure exceptions under the TPIA. Because SFT is not a governmental body, it is not obligated to provide information under the TPIA or to follow the detailed procedures set out in

the TPIA for seeking a ruling from the Office of the Attorney General that were designed for governmental bodies.

15. SFT notes, however, that because of its contractual relationship with the City, it provides certain information to the City. The City, as a governmental body under the TPIA, must disclose and has disclosed information it has about SFT to members of the public pursuant to the process set out in the TPIA.

#### **RELIEF REQUESTED**

16. SFT seeks declaratory relief under the Uniform Declaratory Judgment Act, Chapter 37 of the Texas Civil Practice and Remedies Code. An active controversy exists between the parties. SFT requests the Court declare the rights, status, and other legal relations of the parties to this action with regard to the TPIA Request.

17. Specifically, SFT seeks a declaration that it is not a “governmental body” under the TPIA and that it therefore has no obligation to provide information under the TPIA or to otherwise respond to the TPIA Request.

18. SFT further requests the Court to award its costs and reasonable and necessary attorney’s fees incurred in connection with this action pursuant to Texas Civil Practice and Remedies Code § 37.009.

19. Any and all conditions precedent to SFT’s successful assertion of this cause of action and any damage arising thereunder have been completely performed, fully satisfied, and/or waived.

#### **REQUEST FOR DISCLOSURE**

20. Pursuant to Texas Rule of Civil Procedure 194, SFT requests that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

**PRAYER**

SFT requests that Defendant be cited to appear and answer and that upon final determination of SFT's claims, SFT receive a judgment against Defendant that awards SFT the following relief: (a) a declaration that SFT is not a governmental body under the TPIA and therefore has no obligations under the TPIA or with respect to the TPIA Request; (b) SFT's reasonable attorney's fees; (c) SFT's court costs; and (d) all other relief to which SFT is entitled.

Respectfully submitted,

**THOMPSON & KNIGHT LLP**

By: /s/ Bryan P. Neal  
Bryan P. Neal  
State Bar No. 00788106  
James B. Harris  
State Bar No. 09065400  
Stephen F. Fink  
State Bar No. 07013500  
1722 Routh Street, Suite 1500  
Dallas, Texas 75201  
Telephone: (214) 969-1762  
Facsimile: (214) 969-1751  
E-mail: [bryan.neal@tklaw.com](mailto:bryan.neal@tklaw.com)  
E-mail: [james.harris@tklaw.com](mailto:james.harris@tklaw.com)  
E-mail: [stephen.fink@tklaw.com](mailto:stephen.fink@tklaw.com)

**HAYNES and BOONE LLP**

Lynne Liberato  
State Bar No. 00000075  
Polly Graham Fohn  
State Bar No. 24065318  
1221 McKinney Street, Suite 2100  
Houston, TX 77010  
Telephone: (713) 547-2017  
Facsimile: (713) 236-5538  
E-mail: [lynne.liberato@haynesboone.com](mailto:lynne.liberato@haynesboone.com)  
E-mail: [polly.fohn@haynesboone.com](mailto:polly.fohn@haynesboone.com)

**ROBERT B. SMITH**

Robert B. Smith  
State Bar No. 00786248  
3838 Oak Lawn Avenue, Suite 1220  
Dallas, Texas 75219  
Telephone: (214) 522-5571  
Facsimile: (214) 522-5009  
E-mail: [robert@smith-firm.com](mailto:robert@smith-firm.com)

**ATTORNEYS FOR STATE FAIR OF TEXAS**

078452 000010 14701155.4

4500  
00 571

NO. DC-15-04484

STATE FAIR OF TEXAS,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiffs,</i>	§	
	§	
V.	§	101ST JUDICIAL DISTRICT
	§	
RIGGS & RAY, P.C.,	§	
	§	
<i>Defendants.</i>	§	OF DALLAS COUNTY, TEXAS

**FINAL ORDER ON DEFENDANT'S MOTION TO DISMISS  
PURSUANT TO THE TEXAS CITIZENS PARTICIPATION ACT**

On July 6, 2015, the Court heard *Defendant's Motion to Dismiss Pursuant to the Texas Citizens Participation Act* and the *Defendant's Plea to the Jurisdiction* (collectively, the "motions").

On July 13, 2015, after considering the motions, the responses, the replies, the affidavits and all other evidence on file, and the arguments of counsel, the Court signed two orders granting the motions.

In the order granting *Defendant's Motion to Dismiss Pursuant to the Texas Citizens Participation Act*, the Court indicated its intent to award Defendant its court costs, reasonable attorney's fees, and other expenses incurred in defending against the Plaintiff's lawsuit as well as to sanction the Plaintiff pursuant to TEX. CIV. PRAC. & REM. CODE § 27.009. The Court furthered ordered that within ten (10) days of the signing of that order for the parties to contact the clerk of the Court with an agreed date and time for an evidentiary hearing on the amount of court cost, attorney's fees, other expenses, and sanctions. Subsequently, the evidentiary hearing was set for August 17, 2015.


On August 11, 2015, Defendant filed evidence to support the award of attorney's fees and sanctions. On August 12, 2015, the parties filed a Stipulation Regarding Attorney's Fees and Sanctions. After considering the Stipulation and evidence, and the amount as a sanction sufficient to deter the Plaintiff from bringing any similar action, the Court FINDS that Defendant incurred \$ -0- in court costs, \$38,587.32 in reasonable and necessary attorney's fees, and in other expenses defending against Defendant's lawsuit. The Court further FINDS that Defendant will incur \$30,000 if this case is appealed to the Court of Appeals, \$20,000 if the Plaintiff files a petition for review to the Texas Supreme Court, and \$15,000 if the petition for review is granted. The Court additionally FINDS that a sanction in the amount of \$38,587.32 is sufficient to deter Plaintiff from bringing any similar action.

The Court ORDERS that Plaintiff, State Fair of Texas, that Defendant recover \$ -0- in court costs, \$38,587.32 in reasonable and necessary attorney's fees, and in other expenses defending against Defendant's lawsuit. The Court further ORDERS, conditioned on there being an appeal and on Defendant prevailing in such appeals as to Defendant's Motion to Dismiss Pursuant to the Texas Citizens Participation Act, that Defendant recover \$30,000 if the Plaintiff appeals this case to the Court of Appeals, \$20,000 if the Defendant files a petition for review to the Texas Supreme Court, and \$15,000 if the petition for review is granted. The Court of The Court additionally ORDERS that Defendant recover from Plaintiff \$38,587.32 which the Court has determined is a sufficient sanction to deter Plaintiff from bringing any similar action. Finally, the Court ORDERS that Defendant recover from Plaintiff postjudgment interest on the total sum of \$77,174.64 at the annual rate of 5%.

This Order finally disposes of all claims and all parties and is appealable.

The Court orders execution to issue for this Order.

SIGNED on August 13, 2015


  
\_\_\_\_\_  
The Honorable Staci Williams, Presiding Judge

**APPROVED AS TO FORM ONLY:**

FOR PLAINTIFF, State Fair of Texas

  
\_\_\_\_\_  
Bryan P. Neal  
Thompson & Knight  
One Arts Plaza  
1722 Routh Street, Suite 1500  
Dallas, Texas 75201-2633  
(214) 969-1762 (direct)  
(214) 969-1751 (fax)  
Bryan.Neal@tklaw.com

FOR DEFENDANT, Riggs & Ray, PC

  
\_\_\_\_\_  
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](mailto:Bill@AleshireLaw.com)