

CAUSE NO. \_\_\_\_\_

<b>BILL BUNCH</b> <i>Plaintiff</i>	§	<b>IN THE DISTRICT COURT</b>
	§	
v.	§	<b>TRAVIS COUNTY</b>
	§	
<b>AUSTIN CONVENTION AND VISITORS</b> <b>BUREAU, d/b/a VISIT AUSTIN</b> <i>Defendant</i>	§	
	§	
	§	_____ <b>JUDICIAL DISTRICT</b>

**PLAINTIFF’S ORIGINAL PETITION FOR MANDAMUS**

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiff Bill Bunch files this Original petition against Defendant Austin Convention and Visitors Bureau, d/b/a Visit Austin <sup>1</sup> (“ACVB”) and alleges as follows:

**NATURE OF THE CASE AND DISCOVERY CONTROL PLAN**

1. a. ACVB is a 501(c)(6) nonprofit corporation, but it is also a “governmental body” under the Texas Public Information Act (TPIA) section 552.003(1)(A)(xii). This is so, not only because ACVB is “supported” with public funds—at least 83% of its funds come from City of Austin’s Hotel tax (“HOT tax”) revenue and it could not exist without the City tax funds—but also because ACVB also “spends” the HOT tax money for the City. In addition, *ACVB was created by the Austin City Council* on August 15, 1996; ACVB cannot amend its Articles of Incorporation or Bylaws without approval by the City of Austin; the City Council approves the ACVB annual budget, and the Council has allocated a portion of HOT tax collection to the ACVB to spend.

b. The ACVB is leading the charge to have the Austin City Council increase hotel taxes (“HOT” Tax) and buy land to expand the Austin Convention Center. ACVB claims it has a

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<sup>1</sup> Very recently, on April 28, 2107, ACVB President Thomas J. Noonan filed an assumed-name certificate with the Texas Secretary of State for ACVB to conduct business under the name “Visit Austin.”

report about convention opportunities that Austin lost out on supposedly because the Convention Center is too small. But ACVB refuses to publicly divulge this report.

b. Believing that ACVB should not away with keeping such information secret, Plaintiff Bill Bunch asked the report from the ACVB and information that would demonstrate how ACVB spends HOT tax money now (such as ACVB salaries to its top employees). ACVB refused to supply this public information and sought a ruling from the Attorney General of Texas pursuant to the Texas Public Information Act, Tex. Gov't Code ch. 552. Ironically, while ACVB refused to provide salary information about its top executives, ACVB is required by IRS rules to disclose such compensation on its Form 990 tax return, but now refuses to disclose salary information in response to the Bunch public information request. ACVB should not be allowed to keep secrets about how it spends public funds and should not be allowed to keep secret the evidence on which they base their request for even more public funds.

c. Discovery will be conducted under TRCP 190.3, Level 2.

### **CLAIM FOR RELIEF**

2. Plaintiff seeks monetary relief of \$100,000 or less and nonmonetary mandamus relief. TRCP 47(c)(2).

### **PARTIES**

3. a. Plaintiff is Bill Bunch, the requestor of public information under the TPIA, and a resident of the City of Austin, Travis County, Texas. The last three digits of Bill Bunch's driver's license are 858, and the last three digits of his Social Security number are 677. Mr. Bunch can be served through his attorney-of-record in this case.

b. Defendant Austin Convention and Visitors Bureau, d/b/a Visit Austin ("ACVB") is a defendant pursuant to TPIA section 552.321 as the governmental body to whom Bill Bunch

submitted his request for information and that refused to supply the public information. ACVB can be served through its registered agent, Gina Palmertree, at 301 Congress Ave., Suite 200, Austin, Texas 78701.

### **JURISDICTION & VENUE**

4. The Court has jurisdiction over this case under TPIA section 552.321 which also makes venue mandatory in this Court.

### **FACTS**

5. a. The statements in Paragraph 1 are incorporated here as well. The minutes of the Austin City Council meeting of August 15, 1996 (Agenda Item # 11a) says, in part, that the Council approved “authorizing the City Manager to take the necessary steps for the creation of a non-profit corporation for the purpose of planning and administering a tourism and convention program; approve the bylaws and articles of incorporation for the corporation known as the Austin Convention and Visitors Bureau....” The consolidated annual financial report of the ACVB for 2016 indicates that ACVB receives over \$14.4 million from the City of Austin, or about 83%, out of its total revenue of \$17.5 million. ACVB implements the City of Austin’s statutory authority. ACVB’s articles of incorporation says that ACVB is to “perform the functions required to be performed by the City [of Austin] pursuant to Chapter 351, Texas Tax Code...” If the ACVB is dissolved, its articles of incorporation declare that all of ACVB’s assets “shall be transferred and set over exclusively to the City of Austin....” ACVB’s articles of incorporation also say, “The approval of the City Council of Austin, Texas is required before the Corporation may alter, amend, or repeal its Articles of Incorporation or Bylaws.”

b. Recognizing that the City of Austin created and exercises control over the ACVB, at first Bill Bunch asked the City of Austin for the information contained in Exhibit P-1 about the

ACVB. After all, the 5-year contract with the City, commencing October 1, 2016 and ending on September 30, 2021, includes a requirement that says, “On request of the City, the ACVB shall make the records relating to the handling and expenditure of Hotel Tax Revenue available to the City or any other person designated by the City.” The TPIA defines “public information” as including information that the City owns or has a right of access to. But the Law Department of the City of Austin refused to collect the information from ACVB and provide it to Mr. Bunch. Instead, the City Law Department told Mr. Bunch that he would have to try to get the information directly from ACVB.

c. So, Bill Bunch made a request pursuant to the TPIA directly to the ACVB (see attached Exhibit P-1). Disclosure of the records requested by Bill Bunch is governed by the TPIA. The requested records are not “confidential” as that term is used in the TPIA. TPIA section 552.022(a)(1) makes available for public disclosure the “completed report” (like the one that ACVB is attempting to withhold); section 552.022(a)(2) makes available the name and salary of employees of entities, like ACVB, whose records are subject to the TPIA; and section 552.022(a)(3) makes available for public disclosure a “contract relating to the receipt or expenditure of public or other funds by a governmental body” (such as the contract between ACVB and its Tom Noonan, its President/CEO).

d. Disclosing salaries and benefits of ACVB’s employees is not only required by the TPIA, but the ACVB must also disclose this information on its annual tax return, which is itself public information available online. ACVB claimed it has not filed its 2016 tax return yet. But ACVB’s 2015 tax return disclosed the fact that in that year it paid its President/CEO \$376,508 (including \$82,272 in bonus/incentive pay, \$28,324 in deferred compensation, \$9,778 in nontaxable benefits, and a paid membership in a health club. ACVB reported paying in annual

salary and benefits, \$165,904 to its Vice-President/CMO, \$241,836 to its Senior Vice-President-Sale, and over \$100,000 to each of 5 other officers of ACVB. ACVB reported to the IRS that it pays annual salaries to just its 8 “highest compensated employees” of over \$1.4 million dollars. But ACVB refuses to divulge the up-to-date salary information in response to Bill Bunch’s public information request. ACVB runs up a monthly American Express bill that exceeds \$80,000 but has not yet disclosed what those expenditures are for.

### **COUNT 1 – SUIT FOR MANDAMUS**

6. The facts stated above are incorporated here as the basis for this cause of action for mandamus. Pursuant to the TPIA, Tex. Gov’t Code section 552.321, Plaintiff Bill Bunch brings this suit for mandamus against Austin Convention and Visitors Bureau, d/b/a Visit Austin and asks the Court to order Defendant and its personnel to supply all of the information Bill Bunch requested in Exhibit P-1 attached to this Petition.

### **CONDITIONS PRECEDENT**

7. All conditions precedent to plaintiff’s claim for relief have been performed or have occurred.

### **ATTORNEY FEES**

8. Plaintiff has retained the under-signed attorney to bring this action. Plaintiff asks the court to award costs and reasonable and necessary attorney fees pursuant to TPIA section 552.323.

### **PRAYER**

For these reasons, Plaintiff Bill Bunch asks the Court to set this matter for an expedited hearing on mandamus pursuant to Tex. Gov’t Code section 552.321, and to order Defendant and its personnel to supply all of the information Bunch requested in Exhibit P-1 attached to this Petition. Plaintiff asks the Court to award Plaintiff costs and reasonable and necessary attorney

fees, and to grant Plaintiff all other relief to which he may be entitled.

Respectfully submitted,



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