

CAUSE NO. D-1-GN-17-005498

DANIEL TRISTAN <i>Plaintiff</i>	§	IN THE DISTRICT COURT
	§	
v.	§	TRAVIS COUNTY
	§	
TRAVIS COUNTY <i>Defendant</i>	§	250th JUDICIAL DISTRICT

**PLAINTIFF’S CORRECTED ORIGINAL PETITION FOR MANDAMUS
AND DISCOVERY REQUESTS**

TO THE HONORABLE JUDGE OF THIS COURT:

Plaintiff Daniel (“Dani”) Tristan files this Original petition against Defendant Travis County seeking to obtain public information under the Texas Public Information Act and allege as follows:

NATURE OF THE CASE AND DISCOVERY CONTROL PLAN

1. a. Discovery will be conducted under TRCP 190.3, Level 2.
- b. “Transparency” is a political buzz word for certain politicians who don’t really practice it in their official duties, even when what’s at stake may be the biggest financial transaction in Travis County’s history. If the Texas Public Information Act is intended to have any beneficial purpose for taxpayers at all, one would expect that contracts involving the receipt or expenditure of over \$430 million of taxpayer money to be easily and promptly disclosed to taxpayers. But that is not what happened with Travis County’s 99-year lease of precious taxpayer property, 308 Guadalupe,¹ in downtown Austin supposedly involving over \$430 million of public funds.

¹ This is the site Travis County taxpayers paid almost \$22 million for in 2010 for the location of a new courthouse, but, in an election in November 2015, voters rejected funding for the courthouse.

c. Instead of transparency, Travis County engaged in a secretive process that resulted in a secret deal. Without there ever having been a public discussion in an open meeting of the Travis County Commissioners Court, or even a vote to approve the terms of the Lease, the County handed over the property to a private developer on July 11, 2017. On March 7, 2017, the Commissioners Court, on a vote of 4-0 (Gomez absent), delegated to County Judge Sarah Eckhardt the power to negotiate *and approve* the Lease without bringing it back to the Court for a vote, thus guaranteeing that the final approval of the Lease would be done outside an open Commissioners Court meeting.² Thus, unlike normal, open procedure of action by the Commissioners Court, the minutes of the Commissioners Court will not reflect approval of the Lease by the Commissioners Court, and a copy of the Lease will not be included in the County Clerk's record of Commissioners Court action.

d. The unique property, 308 Guadalupe, is the last undeveloped block of downtown Austin that is not restricted by the Capitol View Corridor. Judge Eckhardt publicly said the Lease would bring Travis County nearly \$430 million in lease payments over 99 years, starting with a \$13.4 million payment that was allegedly to be made at closing (which occurred on July 12, 2017). *Supposedly*, the deal also includes affordable housing, a donation to Austin Parks Foundation, and a requirement for the developer to follow construction worker protection standards. This is likely the biggest transaction in Travis County's history that was approved *without* a record vote of the Commissioners Court. But, since the County refuses to publicly release a copy of the Lease—not even one page of it—no one in the public knows for sure what's in the deal.

² March 3, 2017 Minutes of the Commissioners Court, Agenda Item 12, Motion: "Delegate signing authority of the Court to the County Judge and in the alternative, to the Purchasing Agent, based on the terms discussed in Executive Session."

e. When Judge Eckhardt announced her approval of the Lease with Lincoln Properties on July 11, 2017, Dani Tristan asked for a copy of the Lease.³ Instead of disclosing the Lease, the County asked the Attorney General for a ruling, and Lincoln Properties claimed to the Attorney General that disclosure of the lease of this public property would cause Lincoln Properties “substantial competitive harm.” But, in the ruling OR2017-21955 on September 25, 2017, the Attorney General held that Lincoln Properties had not demonstrated such competitive harm and said Travis County must disclose the lease. Dani Tristan brings this lawsuit because Travis County is *still* refusing to disclose the Lease ... or any part of it.

CLAIM FOR RELIEF

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

PARTIES

3. a. Plaintiff Daniel (“Dani”) Tristan is a resident and taxpayer of Travis County, Texas. The last three digits of Mr. Tristan’s driver’s license number are 643 and the last three digits of his Social Security number are 354. Mr. Tristan can be served through his attorney-of-record in this case.

b. Defendant Travis County is a “governmental body” as defined by the Texas Public Information Act (TPIA), Tex. Gov’t Code section 552.003(1) which is subject to suit for mandamus pursuant to TPIA section 552.321 for having refused to supply public information and information determined by the Attorney General to be subject to mandatory disclosure. Pursuant to Tex. Civ. Prac. & Rem. Code section 17.024(a), the County must be served through its County

³ Taylor Goldenstein of the American Statesman and Kevin Brooke of Trammel Crow Company also submitted public information requests for a copy of the Lease.

Judge, the Honorable Sarah Eckhardt, at the County Judge's office located at 700 Lavaca, 2nd Floor, 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. Pursuant to TPIA section 552.321, the only entity a requestor of public information, like Dani Tristan, can sue under these circumstances is the governmental body, *i.e.*, Travis County.

FACTS

5. a. The facts stated in Paragraph 1 above are incorporated herein.

b. Travis County sought competitive proposals for what to do with the 308 Guadalupe city block pursuant to RFP No. P1608-015-JT after voters refused to let a courthouse be built there. After receiving several proposals, on February 14, 2017, the Commissioners Court considered its Agenda Item No. 16, which *apparently* (viewed in hindsight) resulted in selection of Lincoln Properties as the winner of the RFP with whom the County would negotiate a deal. According to the minutes and video of the meeting, the Commissioners Court discussed the bidder selection only in closed Executive Session with staff. But the selection of Lincoln Properties was not publicly disclosed by vote of the Commissioners Court because the motion, by Judge Eckhardt, was deliberately vague, "to approve the [staff] team's recommendation." If specific selection of Lincoln Properties was the choice of the Commissioners Court, apparently that decision was made in Executive Session and approved with ultimate vagueness by vote in open session.

c. Three weeks later, on March 7th, the Court again discussed the Lease RFP in closed executive session and voted to "Delegate signing authority of the Court to the County Judge and in the alternative, to the Purchasing Agent, based on the terms discussed in Executive Session."

Again, terms of the deal were apparently decided in Executive Session, not disclosed in public, and then delegated to the County Judge to negotiate and approve the terms of the Lease ... in secret.

d. After Judge Eckhardt held a press conference on the Lincoln Properties deal, Travis County received Dani Tristan's public information request for a copy of the Lease by email, to the Travis County Purchasing Office, on July 11, 2017. Exhibit P-1 Attached.

e. On July 24, 2017, Travis County sent the Attorney General a ruling request, sent Lincoln Properties a copy of Mr. Tristan's request, and invited Lincoln Properties to present information to the Attorney General. Travis County made no claims of its own to withhold the Lease from disclosure.

f. On August 7, 2017, Lincoln Properties submitted its comments and arguments for confidentiality of the Lease, claiming that TPIA section 552.110(b) "applies to Section 4.3 of the Ground Lease and request that Section 4.3 of the Ground Lease be redacted prior to the ground lease being provided to the requestors." Exhibit P-2 (as redacted by Lincoln Properties) (emphasis added).

g. The Attorney General issued OR2017-21955 on September 25, 2017 noting that under TPIA section 552.110, "to prevent disclosure of commercial or financial information, the party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm." Exhibit P-3 attached. The Attorney General addressed Lincoln Properties' arguments by saying:

Lincoln argues a portion of its information consists of commercial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, *we find Lincoln has failed to demonstrate the release of any of its information would result in substantial harm to its competitive position....* We note the terms of a contract with a governmental body are generally not excepted from public disclosure. [] Accordingly, the county may not withhold any of Lincoln's information under section 552.110(b) of the

Government Code. As no further arguments against disclosure have been made, *the county must release the submitted information.*

Tex. Att’y Gen. Op. OR2017-21955 at 2 (2017) (emphasis added).

h. After seeing the Attorney General ruling, on September 27, 2017, Dani Tristan emailed Assistant Travis County Attorney Ann-Marie Sheely and asked again for a copy of the Lease. In an email response on September 29th, Ms. Sheely said that Travis County would not supply a copy of the Lease. Ms. Sheely said, “We have been notified by the third-party [Lincoln Properties] that they are making a determination as to whether they will be appealing the [Attorney General’s] ruling. Therefore, Travis County is not permitted to release the information at this time, and will keep you updated on the status.” Ms. Sheely’s response completely ignored the fact that Lincoln Properties only asked the Attorney General for approval to redact *Section 4.3* of the Lease, yet she, on behalf of Travis County, refused to release even the uncontested portion of the Lease.

i. 80 days after having made his original request for a copy of the Lease, Dani Tristan sent Ms. Sheely another email on September 29th protesting the nondisclosure of the Lease and saying, “Government needs to be more transparent and it’s far from that in this situation...very disappointing that this has gone on for so long. Ms. Sheely responded by saying, ironically, that the County “has no objections to release of the lease.... Travis County is not appealing, however, the affected third-party has that right. Travis County Purchasing cannot disregard that process.” It is yet to be seen whether County officials, while negotiating the deal with Lincoln Properties, negotiated to require that the Lease—particularly the financial terms of the Lease—be made public or whether County officials acquiesced in Lincoln Properties’ desire to keep the deal secret.

COUNT 1 – SUIT FOR MANDAMUS

6. a. But there is no law that permits Travis County to withhold the portions of the Lease

that Lincoln Properties did not even contest. Contrary to what Ms. Sheeley told Dani Tristan, Travis County has a legal duty to promptly disclose the *entire* Lease unless and until a court order prevents such. Travis County does not have the option to withhold the Lease, particularly if, as Ms. Sheeley’s emails indicated, Travis County is not going to sue the Attorney General to contest the Attorney General’s ruling.

b. Under these circumstances, TPIA section 552.353(a) makes it a criminal offense for the Travis County officer for public information to fail or refuse to provide “public information to a requestor as provided by this chapter.” There is an affirmative defense to such criminal charges, but only if the County’s officer for public information files suit “not later than the 10th calendar day” after receiving the Attorney General ruling. But Ms. Sheeley indicated that Travis County was not going to file such suit nor to give Lincoln Properties a deadline to get a court order preventing disclosure of the Lease. The County has given no indication that it advised Lincoln Properties that the County must release the entire report by that deadline. Instead, the County has withheld the entire Lease and empowered Lincoln Properties—who has no incentive at all to see this matter promptly litigated—the ability to further delay disclosure.

c. The facts stated above are incorporated here as the basis for this cause of action for mandamus and injunctive relief. *See* TPIA, Tex. Gov’t Code section 552.321. Dani Tristan brings this suit to ask the Court to issue mandamus against Travis County to provide a copy of the Lease.

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(a).

PRAYER

For these reasons, Plaintiff asks the Court to set this matter for hearing on mandamus to order Travis County and its officers to provide Plaintiff a complete copy of the Lease between Travis County and Lincoln Properties made pursuant to RFP No. P1608-015-JT. Plaintiff asks the Court to award Plaintiff costs and reasonable and necessary attorney fees, and to grant Plaintiff all other relief to which it may be entitled.

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF

ATTACHED: Plaintiff's First Discovery Requests