

CAUSE NO. D-1-GN-20-002155

JOSEPH LARSEN,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
TEXAS DEPARTMENT OF PUBLIC	§	
SAFETY,	§	
	§	
Defendant.	§	<u>459TH</u> JUDICIAL DISTRICT

**ORIGINAL PETITION FOR MANDAMUS**

COMES NOW Joseph Larsen, Plaintiff herein, and files this Original Petition for Mandamus under the Texas Public Information Act against the Texas Department of Public Safety (“DPS”) and would respectfully show the Court the following:

**I.**  
**DISCOVERY CONTROL PLAN**

Discovery in this matter is to be conducted under Level 2, pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

**II.**  
**INTRODUCTION AND BACKGROUND FACTS**

Joseph Larsen (“Larsen”) sent a Texas Public Information Act (“TPIA”) request on March 4, 2020 to DPS (the “Request”) for:

1. All communications regarding Natin “Nate” Paul, World Class Holdings, World Class Capital Group and/or affiliated companies; and
2. All communications regarding or referencing [REDACTED]

*Exhibit A.*

DPS requested clarification on Larsen's request on March 11, 2020, asking "Please provide a date range for the communications that you seek." *Exhibit B*. Larsen responded the following day that:

I deliberately did not include a date range because I did not expect the full universe of the communications responsive to my request to be voluminous. Simply do the same searches you otherwise would without any date restrictions.

*Exhibit C*.

Despite receiving no narrowing of the Request, DPS responded the very next day, March 13, 2020, requesting a ruling from the Attorney General to withhold all information responsive to the request relying upon TEX. GOV'T CODE § 552.108(a)(1) (the "Request for Ruling"). *Exhibit D*. The only factual assertions in DPS's sparsely written Request for Ruling to withhold all responsive information are that "[a]n investigation involving the above-referenced individual, entity and location is ongoing" and "[b]ecause this is an ongoing investigation, the release of potential evidence would interfere with the investigation and prosecution of this case." In addition, the Request for Ruling stated that it was sending a "representative sample" of the responsive information to the Attorney General indicating that the requested information was voluminous. TEX. GOV'T CODE 552.301(e)(1)(d).

On March 30, 2020, Larsen sent an email to DPS demanding prompt release of basic information. *Exhibit E*. DPS responded the same day that:

There was no basic information available for release in the responsive records located by the Department. The Department has followed the Public Information Act and submitted its brief to the OAG. We await the ruling and will follow the OAG's direction in terms of the release of records.

*Id.*

After further communications between Larsen and assistant general counsel for DPS failed to resolve the issue, Larsen sent DPS a demand letter on April 10, 2020 advising DPS that

unless it promptly released to him all basic information contained in the responsive information, he would immediately prepare and file a petition for mandamus against DPS. *Exhibit F.*

In response, on April 13, 2020, DPS sent Larsen an undated record titled “Supplemental Report” which was entirely redacted except for a paragraph in the synopsis section of its first page which reads:

On August 14, 2019, Texas Department of Public Safety (TXDPS) Criminal Investigation Division Special Agent [REDACTED] assign [sic] to the Federal Bureau of Investigation-Austin Resident Agency served a search warrant at the residence of Natin Paul, founder and Chief Executive Officer of World Class Capital Group, LLC, [REDACTED]

*Exhibit G.*

From this limited release, it is immediately apparent that DPS flatly misrepresented to Larsen that there was no basic information in the information responsive to his request. Further, because the information is from a “Supplemental Report,” we can reasonably conclude there was also an initial report that probably preceded the serving of the search warrant referenced in the synopsis of the Supplemental Report. In addition, the Supplemental Report itself is four pages long but Larsen received only a single paragraph. The basic information released is limited to the name of one of the investigating officers, Criminal Investigation Division Special Agent [REDACTED] [REDACTED] and possibly the location of the supposed or presumptive “crime” – the [REDACTED] residence. There is no information regarding the identification and description of any complainant precipitating any law enforcement action; the time of occurrence of any incident that precipitated law enforcement action of a crime; and/or the specific property involved or a detailed description of the purported offense, all of which clearly would be included in the original and supplemental reports.

In addition, DPS’s thin factual allegations in its Request for Ruling are insufficient to support the application of the law enforcement exception. It is unclear which entity is conducting

the investigation, DPS or the FBI. There are no factual allegations to support a conclusion FBI has taken the lead. Nor has there been a supporting assertion from any representative of the FBI that this is the case. More telling, there is no reference at all to the FBI in DPS's claim it is entitled to withhold the information pursuant to the law enforcement exception.

Given Officer [REDACTED] role as being "assign" [sic] to the FBI, it is also clear that there is a great deal of information under [REDACTED] control, and therefore DPS's control, than has been acknowledged by DPS that is also responsive to the Request.

### **III.** **PARTIES**

Joseph Larsen is an attorney living and practicing in Houston, Harris County, Texas. Larsen is a "requestor" within the meaning of the Texas Public Information Act. TEX. GOV'T CODE § 552.003(6).

Defendant Texas Department of Public Safety (DPS) is a state agency headquartered at 5805 N. Lamar Blvd., Austin, Travis County, Texas 78752. DPS may be served through the Office of the Attorney, General Deputy Attorney General for Civil Litigation Darren McCarthy, Price Daniel, Sr. Building, 8th Floor, 209 W. 14th Street, Austin, Texas 78701.

### **IV.** **JURISDICTION AND VENUE**

Larsen files this petition in intervention pursuant to TEX. GOV'T CODE § 552.321. Venue is proper in Travis County based upon TEX. CIV. PRAC. & REM. CODE § 15.014; *University of Texas v. Booker*, 282 S.W.2d 740 (Tex. Civ. App.—Texarkana 1955, n.w.h.).

**V.**  
**AUTHORITIES**

Larsen brings this suit under the Texas Public Information Act, TEX. GOV'T CODE § 552.001, *et seq.*, for the release of public information requested in possession and/or control of DPS.

DPS's assistant general counsel represented to Larsen that even basic information can be withheld if "the context of the basic information would" reveal investigative facts, and that the Office of Attorney General (OAG) had approved this approach. However, in *City of Carrollton v. Paxton*, 490 S.W.3d 187 (Tex. App.—Austin 2016, pet. denied), probably the leading case on the issue, no such doctrine is referenced. The *Carrollton* case concerns the release of basic information from the City's Computer–Aided Dispatch (CAD) system, certainly a source of information where the "context" argument could be made. The court held simply:

[T]hat to the extent information contained in the CAD notes must be provided in order to provide "basic information ... about [the] crime," they are subject to disclosure under Subsection (c).

*Id.* at 202 (emphasis added). Rather than a "context" argument for withholding, the opinion holds squarely that the basic information must be released regardless of where it is located in the responsive information.

Here, the basic information DPS released is only the name of one of the investigating officers, Criminal Investigation Division Officer [REDACTED] and possibly the location of the purported crime(s) – the [REDACTED] residence. There is no information regarding the identification and description of the complainant; the time of occurrence of the purported crime; the property allegedly involved (e.g., money, drugs, securities); nor any detailed description of the alleged offense(s) that we would expect to find in the two separate reports.

Aside from the issue of release of basic information, in order to establish the applicability of section 552.108(a)(1), a law enforcement agency must explain how and why releasing the information would interfere with law enforcement. DPS's barebones factual assertion that "[a]n investigation involving the above-referenced individual, entity and location is ongoing" fails to show how release of the requested information would allegedly interfere with law enforcement. *Thomas v. Cornyn*, 71 S.W.3d 473, 486-90 (Tex. App.—Austin 2002, no pet.) (finding law enforcement exception inapplicable when governmental entity offered no evidence other than its assertion that the exception applied; "the sheriff failed to explain how disclosure of the information would interfere with law enforcement"); Tex. Att'y Gen. ORD-409 (1984) (law enforcement agency did not prove exception because it had "not indicated how release of the name of a burglary victim would, in a particular instance, unduly interfere with law enforcement or crime prevention").

#### **COUNT ONE: MANDAMUS**

Larsen seeks the remedy of a petition for mandamus for DPS's refusal to produce the requested public information as required by the Texas Public Information Act. TEX. GOV'T CODE § 552.321(a); *Kallinen v. City of Houston*, 462 S.W.3d 25 (Tex. 2015). Therefore, Larsen respectfully requests accelerated discovery, an accelerated hearing, and an order granting mandamus requiring DPS to produce the requested information.

#### **COUNT TWO: COSTS AND ATTORNEYS' FEES**

Larsen seeks an award of costs and reasonable attorneys' fees incurred pursuant to the express authority granted in the Texas Public Information Act, TEX. GOV'T CODE § 552.323.

WHEREFORE, PREMISES CONSIDERED, Larsen respectfully requests that the Court set the foregoing matters for a full and final hearing on an accelerated basis at the earliest possible date, and, upon final hearing, grant the following relief:

- (1) entry of a judgment for mandamus compelling DPS to produce the information requested;
- (2) entry of order finding Larsen has substantially prevailed against DPS in this action;
- (3) an award granting judgment of and from DPS for reasonable attorneys' fees incurred, court costs, and costs of litigation; and
- (4) such other and further relief, whether at law or in equity, as Larsen may be entitled to receive.

Respectfully submitted,

/s/ *Joseph R. Larsen*

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**ATTORNEYS FOR JOSEPH LARSEN**