

Message

From: Gordon, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1DE49522ABF0469A902DD47432537850-JDG1]
Sent: 12/7/2020 1:30:52 PM
To: French, Lesley [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1c04e45b33e947bc8e16a7bdf5ad4b3-LKF]
Subject: RE: Public Information Request No.R006885

Lesley, I am sorry, this took longer than I expected. Below is a summary of the DPS file described in my earlier email. This summary lays out the full time line including all of the procedural issues that made this file so unique. However, if you only want a bottom line summary, that is found in the final paragraph below. Please let me know if you would like any additional information.

- Justin

File Summary:

On March 4, 2020, Joe Larsen submitted a public information request to the Department of Public Safety on March 4th. The request sought all communications regarding Natin "Nate" Paul, World Class Holdings, World Class Capital Group, and affiliated entities. The request also sought all communications regarding or referencing the address [REDACTED] in Austin. On March 11, 2020, DPS sought clarification of the request by asking the requestor to limit his request by providing a date range. On March 12, 2020, the requestor responded that he would not provide a date range. Accordingly, March 12th became the effective date of receipt for Public Information Act ("PIA") purposes. On March 13th, DPS submitted a PIA decision request to our office. We received the decision request via hand delivery on March 13th, and this resulted in our office opening a file with a May 18, 2020 statutory 45-business-day deadline. In their March 13th decision request, DPS submitted basic arguments stating an investigation regarding the named individual and address was ongoing and that release would interfere with that investigation. Thus they sought to withhold the information under section 552.108(a)(1) of the PIA law enforcement exception. At this time DPS submitted a small representative sample of records. Based on these facts alone, and our typical practices, the file would have been relatively straightforward if the procedural issues stopped there. However, on April 16, 2020, the requestor filed a petition for mandamus against DPS under Government Code section 552.321. The petition sought release of the requested documents. I was made aware of this litigation in an email the requestor sent to DPS's public information officer on April 20, 2020, which I was cc'd on. Note: I checked the Travis County website this morning, and as of December 7, 2020, that litigation remains pending.

Then, on May 6th, less than two weeks before the response was required to go out, we received additional correspondence from DPS. This correspondence was dated May 5th, and stated that DPS now believed the requested information may implicate the interests of a third party, the FBI. This correspondence indicated that DPS notified the FBI of the request for the first time on May 5, 2020. This was despite the requirement under Government Code section 552.305 to notify third parties of the request within 10 business days of the request. DPS did not explain the timing of the notice, and none was apparent in the file. In this filing, DPS also submitted the full set of responsive documents, and these submitted documents were different than the records submitted as "representative" in its initial March 13th briefing.

After this late filing, and because we had not received the FBI comments, we took a statutory 10-day extension pursuant to Government Code section 552.306(a). This made the statutory 55-business-day deadline June 2, 2020. On May 15th, the business day before the response was originally required to go out, the FBI had submitted its brief to our office. However, COVID-19 mail procedures prevented our office from immediately identifying the FBI's brief. In fact, we were not aware the FBI comments had been submitted before the requestor submitted a PIC request for an unredacted copy of the FBI briefing on May 19, 2020. The FBI comments were located later that day and attached to the file.

On May 20th, the requestor submitted comments to our office, dated May 18th. These comments informed our office that the FBI had nearly completely redacted the copy of the brief the FBI provided the requestor. Government Code section 552.305(e) permits an entity to redact information revealing the substance of the information requested from the brief copy provided to the requestor. However, the FBI fully redacted 4 of the 6 pages of the brief. With the exception of a brief introduction and conclusion, the redactions obscured all of the FBI's arguments including the specific subsections of the law enforcement exception it was asserting. Although the requestor sought an unredacted copy of the arguments, the short timing made it impossible for the requestor to see the arguments before our response was due.

The procedural circumstances in this file are completely unique. While it was pending, we discussed numerous options to reach an accurate and consistent result within our statutory deadlines. We also considered the outcome in this file in conjunction with earlier related files, including a file where we withheld information based on arguments received from the FBI for similar investigation documents maintained by the Texas State Securities Board. That ruling was 2019-33291 and is available here: [LINK](#). As our statutory deadline in this file arrived, we decided that the pending litigation was the best place to conclusively resolve the records dispute. So, we issued a closed letter and declined to issue a decision. In doing so, we noted that the late timing of the DPS notice to the FBI and the FBI's late-arriving and heavily redacted comments prevented us from issuing a decision in accordance with due process. The closed letter maintained the status quo and allowed the trial court to independently review the claims.

From: Gordon, Justin
Sent: Monday, December 7, 2020 10:11 AM
To: French, Lesley <Lesley.French@oag.texas.gov>
Subject: FW: Public Information Request No.R006885

Lesley, attached below is our response to a PIR from a couple of months ago. The PIR requested information about a DPS decision request involving Nate Paul, World Class Holdings, and a specified address. The responsive documents, found in the attached PDF, include our response letter and the outside briefing submitted to us by DPS, the requestor, and the FBI. This information does not include the privileged internal portions of the file, which were not responsive to the request. Please note that these documents include unredacted confidential email addresses. Also, this packet includes the fully redacted and, at pages 23-28, the unredacted FBI brief we received. As described in the below email, the unredacted brief was the subject of another earlier PIR, which was handled by PIC and Opinions. I believe that all of this information, including the unredacted FBI brief, was released, but PIC could confirm that is the case.

I also checked, and the litigation that the requestor filed against DPS seeking release of the requested documents, and which is referenced in our response letter, remains pending in Travis County. That cause number is D-1-GN-20-002155, and it is styled *Larsen v. Texas Department of Public Safety*.

Please let me know if you have any questions or would like any additional information.

- Justin

From: Smith, Tamara <tamara.smith@oag.texas.gov>
Sent: Friday, October 23, 2020 2:56 PM
To: PIC Request <PICRequest@oag.texas.gov>
Cc: Gordon, Justin <Justin.Gordon@oag.texas.gov>; Bridges, Sarah <Sarah.Bridges@oag.texas.gov>
Subject: FW: Public Information Request No.R006885

ORD's responsive information is attached. We note that there are e-mail addresses subject to section 552.137 of the Government Code. In addition, some of the information at issue, specifically the FBI brief, was subject to a previous request R004417. ORD is unaware of the outcome, please handle accordingly.

From: Ward, Jahnna <Jahnna.Ward@oag.texas.gov>
Sent: Saturday, October 17, 2020 9:44 AM
To: Smith, Tamara <tamara.smith@oag.texas.gov>
Subject: FW: Public Information Request No.R006885

I've attached the responsive records. There are 3035 issues in the FBI brief, which was the subject of PIR# R004417 (attached).

FYI - There's also an OAG 10-day notice for this file, but I don't think its responsive.

From: PIC Request <PICRequest@oag.texas.gov>
Sent: Tuesday, October 13, 2020 2:49 PM
To: PIC Open Records Division <PICOpenRecords@texasattorneygeneral.gov>; PIC Press Office <PICPressOffice@texasattorneygeneral.gov>; PIC Executive Administration Division <PICExecutiveAdmin@texasattorneygeneral.gov>
Subject: Public Information Request No.R006885

This email was sent to you from the Public Information Coordinator's Office.

The OAG received a public information request on October 13, 2020 as follows:

A copy of any and all briefs submitted to the agency regarding the TPIA request ID#82822 (Texas Department of Public Safety) and the agency's response, which I believe is ORR#20-0983. I believe this was an appeal to the OAG on a records request originally made to DPS by Nate Paul or his attorneys. The appeal was sent over in March, I believe, and an opinion/response was returned in June, I believe, although those dates might be off.

Lauren McGaughy
The Dallas Morning News

This message is being sent to the Open Records Division, Press Office and Executive Administration. Please respond via e-mail by October 15, 2020 regarding whether or not your division has responsive documents.

Thank you.