

THE SENATE OF THE STATE OF TEXAS
COURT OF IMPEACHMENT

IN THE MATTER OF
WARREN KENNETH PAXTON, JR.

Antony Dawson

AUG 05 2023

CLERK OF THE COURT

ATTORNEY GENERAL WARREN KENNETH PAXTON JR.'S
MOTION TO DISMISS ARTICLE III

Only the most extraordinary charges can justify the most extraordinary outcome of impeachment and removal of a statewide elected official. Parting with historical practices, the House now seeks to remove a constitutional officer for nothing more than disagreements with the legal conclusions of his subordinates. In Article III, the House asks this Court to remove the Attorney General from office based on legal decisions made by his office concerning the Public Information Act (PIA). At most, Article III describes disputed advisory rulings which are regularly and routinely addressed by Texas courts. The Office of Attorney General's (OAG) open records rulings, numbering thousands per year, are advisory in nature and subject to judicial review at the request of any involved party. Any legally incorrect conclusion OAG may have reached is reviewable—and correctable—by a court. But there are no allegations—or evidence—that any party even sought to challenge the open records rulings at issue in this Article. And because the parties involved had no issue with the OAG's rulings, it is absurd to now cite those rulings as a basis for impeachment.

Even if the House could prove beyond a reasonable doubt that the unidentified rulings underlying Article III were legally incorrect (and they cannot), such a mistake would not warrant the extraordinary remedy of impeachment and removal. Trial court judges regularly make incorrect decisions and are routinely reversed on appeal, but they are not removed from office. Instead, our democracy affords litigants review mechanisms to address incorrect decisions. The PIA itself expressly provides for a robust procedure for reviewing and correcting erroneous decisions. That procedure is not impeachment. Article III should be dismissed.

STANDARD

“While impeachable offenses are not defined in the Constitution, they are very clearly designated or pointed out by the term ‘impeachment,’ which . . . connotes the offenses to be

considered.” *Ferguson v. Maddox*, 263 S.W. 888, 892 (Tex. 1924). Our “Constitution in this matter of impeachment created nothing new. By it, something existing and well understood was simply adopted.” *Id.* An impeachable offense is a “grave official wrong[]” as historically understood in English and early American practice “by an examination of the Constitution, legal treatises, the common law[,] and parliamentary precedents.” *Id.* It is “emphatically” not an “arbitrary and unrestrained” power to remove an elected official. *Id.* Rather, “[i]mpeachment is used only in extreme cases,” *Ferguson v. Wilcox*, 28 S.W.2d 526, 533 (Tex. 1930), consistent with “such official delinquencies, wrongs, or malfeasances as justified impeachment according to” historical practices. *Ferguson*, 263 S.W. at 892. This Court determines whether an allegation rises to the historic level of an impeachable offense as a matter of law. *Id.* And this Court has the power to dismiss an Article for failing to rise to that level. *Id.*; *see also* S. Journal, 88th Cong., 1st Sess. at 40-52 (2023), Rule 15. It is also a fundamental constitutional principle that one cannot be convicted for something that does not constitute an offense. *Garcia v. State*, 981 S.W.2d 683, 685 (Tex. Crim. App. 1998).

ARGUMENT

I. Article III Is Impermissibly Vague.

Article III is extraordinarily vague. It charges the Attorney General with “refusing to render a proper decision relating to a public information request for records held by the Department of Public Safety and [for] issuing a decision involving another public information request that was contrary to law.” But this Article fails to identify with any specificity which of the over 2,000 PIA rulings by OAG in fiscal year 2020 was improper or contrary to law. The only piece of identifying information from which to narrow the pool of 2,000 is this: it purportedly related to records held by DPS. But DPS sent 538 ruling requests to OAG in fiscal year 2020 alone.

<https://tinyurl.com/DPSORD>. The extremely high level of generality within this Article is constitutionally intolerable.

The Texas Constitution and United States Constitutions require more: they require the House to “descend to the particulars,” *Russell v. United States*, 369 U.S. 749, 763 (1962) (quotation omitted), of what the House alleges the Attorney General has done wrong. Put another way, Article III must, standing alone, describe the accusations against the Attorney General “with sufficient clarity and detail to enable the defendant to anticipate the [prosecution’s] evidence and prepare a proper defense to it.” *Garcia*, 981 S.W.2d at 685; *see* Tex. Const. art. I, § 10. This constitutional obligation requires that every charging document contain on its face all “the elements of the offense and every fact or circumstance necessary to complete description thereof.” *Labelle v. State*, 720 S.W.2d 101, 107 (Tex. Crim. App. 1986).

Article III utterly fails to apprise the Attorney General or this Court of which open records decisions are at issue or precisely why the unspecified decisions were improper. Article III should be dismissed because the Constitution does not require the Attorney General to resort to sheer speculation to understand the charges against him and to prepare a defense at trial. *Terry v. State*, 471 S.W.2d 848, 852 (Tex. Crim. App. 1971); *Drumm v. State*, 560 S.W.2d 944, 946-947 (Tex. Crim. App. 1977); *Swabado v. State*, 597 S.W.2d 361, 364 (Tex. Crim. App. 1980).

II. Article III Fails to State an Impeachable Offense.

Article III does not allege a “grave official wrong” comparable to treason or a high crime against the people of Texas—indeed, it falls far short of the level of severity required to constitute an impeachable offense. Impeachable offenses under our Constitution include only those “established by the common law and the practice of the English Parliament and the parliamentary bodies in America.” *Ferguson*, 263 S.W. at 893. There is no historical support for the House’s

claim that issuing an incorrect PIA decision, which is not binding and which either party is free to challenge in a district court, rises to the level of an extreme case which might warrant impeachment. *Wilcox*, 28 S.W.3d at 533.

The purpose, structure, and procedures under the PIA all provide ample protection for the public, and the notion that mere disagreement with a PIA decision could be impeachable is ahistorical and indefensible. The PIA provides that the public is entitled to “complete information about the affairs of government and the official acts of public officials and employees” unless otherwise expressly restricted by law. Tex. Gov’t Code § 552.001. The Act is to be liberally construed in favor of disclosing public information. *Id.* When a governmental body receives a public information request, it has ten business days to identify the responsive information, release the information that is disclosable, and if necessary, request an Attorney General ruling that any otherwise responsive information falls within one of the PIA’s exceptions to public disclosure and can be withheld. Tex. Gov’t Code § 552.301. Importantly, the OAG’s role is only to provide legal guidance; the responsibility for responding to a PIA request is always on the recipient.

When asking for a PIA ruling, the governmental body must submit written comments explaining why a PIA exception allows the specific information at issue to be withheld, and the governmental body must also submit a representative sample of the information it seeks to withhold. Tex. Gov’t Code § 552.301(e). A governmental body seeking to withhold information bears the burden of establishing to the Attorney General that the requested information falls within an exception from disclosure under the Act. *Arlington ISD v. Tex. Atty. Gen.*, 37 S.W.3d 152, 157 (Tex. App—Austin 2001, no pet.). Additionally, if the request implicates a third party’s interests, the governmental body must within ten business days provide the third party with notice of the request informing the party that it can submit its position to OAG. Tex. Govt § Code 552.305.

Exceptions to the Act are narrowly construed. *Arlington ISD*, 37 S.W.3d at 157. After issuing a ruling, OAG returns the information to the governmental body. Ex. B at 1; Ex. C at 1.

There are consequences for the recipient of a PIA request if they do not follow these procedures. If an Attorney General ruling is not timely requested, the requested information is presumed public. Tex. Gov't Code § 552.302. This presumption can only be overcome if the governmental body establishes a compelling reason to withhold it, such as a mandatory exception to public disclosure that cannot be waived. Tex. Gov't Code § 552.302; *Abbott v. City of Dallas*, 453 S.W.3d 580, 588 (Tex. App.—Austin 2014), *aff'd sub nom. Paxton v. City of Dallas*, 509 S.W.3d 247 (Tex. 2017). As relevant here, the law enforcement exception, Section 552.108, is not a mandatory exception and thus *can* be waived. *Id.* at 585.

It is true that the Attorney General is tasked with administering the public information process with a goal of securing uniformity in the PIA's interpretation. Tex. Gov't Code § 552.011. But PIA decisions are not enforceable except through filing a state court lawsuit, and the Attorney General's decisions are not binding upon the courts. *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 322 (Tex. App.—Houston [1st Dist.] 1984, no writ); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no pet.). And the opportunities for courts to review PIA decisions are substantial. Any interested party can initiate judicial review of the Attorney General's PIA ruling in any given case. The governmental body can file suit seeking declaratory relief from an Attorney General decision requiring the disclosure of public information, Tex. Gov't Code § 552.324, as can a third party whose information is impacted by the PIA request, Tex. Gov't Code § 552.325. If a suit is filed, the information will not be released until the district court reaches a decision. *See Dallas Morning News v. City of Garland*, 994 S.W.2d 258, 261–62 (Tex. App.—Austin 1999, no pet.). The requestor of the information can also file suit

if the Attorney General does not require the governmental body to disclose the requested information. *Thomas v. Cornyn*, 71 S.W.3d 473, 483 (Tex. App.—Austin 2002) (citing *Gilbreath*, at 411). And if the Attorney General refuses to issue a PIA decision, that can be challenged in court, too. *Gilbreath*, 842 S.W.2d at 411-412 (citing *Hous. Chron. Publ'g Co. v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989)). A party can also file a formal complaint with a county or district attorney against a governmental body for allegedly violating the Act. Tex. Gov't Code § 552.3215.

Against the backdrop of this robust procedural framework for handling PIA requests, as well as the significant substantive protections for all involved, it is difficult to imagine how an erroneous PIA decision could give rise to an impeachable offense—let alone a correct decision. *See infra* Part III. Issuing an allegedly wrong decision—whether labeled as “improper” or “contrary to law” or anything else—is not an impeachable offense. An incorrect PIA decision cannot support removing a statewide elected official from office; it cannot even support the removal of a locally elected judge. Tex. Gov't Code § 665.052; Tex. Const. art. XV § 8. If it could, district court judges would be subject to removal every time one of their rulings was reversed by an appellate court.

Article III does not even allege that a party sought judicial review of either of the OAG decisions to which it gestures. That the House would later prefer an Article of Impeachment predicated on a PIA decision that no impacted party challenged as incorrect is astonishing. An allegedly wrong decision in two unspecified open records decisions—out of the thousands handled by OAG every year—cannot subject the Attorney General to impeachment because “[e]rrors in judgment, or want of capacity to discharge the duties of the office, can never be supposed to be included in these words, *high crimes and misdemeanors*.” *The Anti-Federalist*, Essays of Brutus XV, 185 (Herbert J. Storing, University of Chicago Press 1985) (emphasis original). Yet the House

thinks it appropriate to remove the Attorney General from office for an alleged legal error by his office regarding a PIA decision. There is simply no legal or historical explanation as to why the conduct alleged in Article III constitutes an impeachable offense, and it should be dismissed.

III. The Attorney General Did Not Violate the Public Information Act.

Because Article III is unconstitutionally vague on its face, the Attorney General is forced to look outside the four corners of the Article to identify which PIA rulings may be at issue here. Based on the House General Investigating Committee's public hearing transcript, it appears that the House is contesting open records decisions concerning documents DPS possessed related to Nate Paul. Transcript of Public Hearing at 39:17-40:8, *In re Paxton* (Transcript). Neither the Attorney General nor this Court should have to guess as to which PIA rulings are at issue, as explained above. But if these are the rulings at issue, Article III must be dismissed for another reason: these PIA decisions were correct as a matter of law.

A. OAG's Open Records Decision Concerning "Records Held by [DPS]" was Legally Correct.

As summarized by the Chief of OAG's Open Records Division (ORD), this open-records-ruling request was unique because DPS itself had violated the PIA. Ex. A. Although DPS requested a ruling from ORD within ten-business days of receiving the PIA request, it provided ORD with only a very small representative sample, and even worse, DPS failed to provide notice to the Federal Bureau of Investigations that it may have an interest in the case for *over two months*. Ex. A; *Cf.* Tex. Govt. Code § 552.305 (requiring notice within ten business days). DPS's late notice to the FBI, and the FBI's late interjection of additional arguments into the matter—arguments that had been completely redacted out of the copy of the FBI letter the FBI was statutorily required to send to the requestor, thus preventing the requestor from being able to respond to the FBI's arguments—left ORD with mere days to determine how to rule based on incomplete submissions.

Ex. A. Moreover, ORD was left with a difficult decision: should it punish the FBI for DPS's late notice by presuming all requested information to be public, or should it reach some other result? To complicate matters further, the requestor had already filed a mandamus lawsuit against DPS related to the request seeking disclosure of the documents at issue. Ex. A; *See Kallinen v City of Houston*, 462 S.W.3d 25, 28 (Tex. 2015) (holding that a requestor is not required to defer a suit for mandamus until the attorney general issues a decision). Accordingly, no matter what ORD decided, it was virtually certain that a court would conclusively resolve the issue.

ORD determined that the best course of action under these "completely unique" circumstances was to let the already-began judicial process run its course to resolve the rights of the parties to the documents. Ex. A. ORD accordingly issued a letter closing the file. Ex. B. The closing letter acknowledged that ORD must normally issue a ruling based on a 2011 Open Records Decision, but that given DPS's failure to timely notify the FBI, ORD could not issue a timely decision consistent with the PIA's due process standards. Ex. B. ORD was leaving the matter to be conclusively decided by the courts. Ex. B. No documents were disclosed because of the closing letter, and the representative sample DPS had provided was returned to DPS on June 2, 2020. Ex. B, p. 1.

This ruling did not violate the PIA. While it arguably butted up against a prior open records decision, these decisions are advisory and not binding. *Houston Chronicle*, 673 S.W.2d at 322; *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010). Historically, OAG had declined to issue decisions if a lawsuit regarding the same information was pending. *See, e.g.*, Tex. Att'y Gen. Op. No. JM-287 (1984). There is no legal support for the contention that ORD's decision to issue a ruling that *may* have *partially* conflicted with a prior open records decision violates the PIA. And

any interested party had the right to file a lawsuit against OAG seeking to compel the agency to issue a decision rather than close the file. *Gilbreath*, 842 S.W.2d at 411–12. No party did so.

This portion of Article III asserts, at most, an ordinary legal error that had an ordinary remedy in a state trial court—a remedy that is clearly laid out in the PIA itself, but which no interested party decided to pursue. Article III’s allegation that OAG somehow violated the PIA fails here as a matter of law.

B. The PIA Was Not Violated by an Alleged Decision “Involving Another Public Information Request That Was Contrary to Law and Applicable Legal Precedent.”

It is utterly impossible from the face of Article III to ascertain what this second decision could be about. The Attorney General can only guess as to what other PIA decision is targeted by Article III or how it was contrary to law or applicable legal precedent. And it is wrong and unconstitutional that the Attorney General should be forced to guess. *Terry*, 471 S.W.2d at 852. There is some indication, however, that this allegation relates to a PIA request to OAG itself seeking an unredacted copy of the FBI’s May 13, 2020 letter that was part of the DPS records request presumably implicated in the first portion of Article III. Transcript at 42-43; Ex. C. But OAG’s decision to release the May 13, 2020 FBI letter was demonstrably correct, and the FBI allowed the information to be released without ever challenging it in court.

After OAG received the PIA request for the May 13, 2020 FBI letter, OAG notified the FBI as an interested third party and requested a ruling from ORD as to whether the information had to be released. Ex. C; Tex. Gov’t Code §552.305. OAG did not advocate for disclosing or withholding the May 13, 2020 FBI letter, leaving that decision up to the FBI. Ex. C; Tex. Gov’t Code §552.305(c). The FBI responded to ORD with a June 18, 2020 letter, but the FBI did not address why the May 13, 2020 letter was exempt from public disclosure. Ex. C. It instead again

explained why the underlying documents sought *from DPS* in the *prior* request were exempt from disclosure, without any discussion of its May 13, 2020 letter. Ex. C. Since the FBI did not argue that its May 13, 2020 letter was excepted from disclosure, OAG issued a decision releasing the May 13, 2020 letter because it was presumed to be public and no mandatory exception to public disclosure applied. Ex. C. This was a textbook application of the PIA. And as described above, the FBI could have filed a lawsuit challenging the ruling to prevent the release of the brief, but it did not do so.

Any argument by the House that this ORD decision—assuming that this is the decision they intend to put at issue—was wrong is belied by the law and by the FBI’s decision to allow disclosure of this material rather than challenge the decision of the Attorney General’s subordinates. Accordingly, Article III’s allegations here also fail as a matter of law.

CONCLUSION

For the foregoing reasons, Article III should be dismissed.

Respectfully submitted.

/s/ Allison M. Collins

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CERTIFICATE OF SERVICE

This Motion was served via email on the Senate, the Lieutenant Governor, and the House Board of Managers through their counsel, Rusty Hardin and Dick DeGuerin, on August 5, 2023.

/s/ Allison M. Collins

Allison M. Collins

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 7800 Cava Place 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.

EXHIBIT A

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.

Open Records Ruling Tracking Sheet

EXHIBIT B

File Number: OR-828822-20	Issued as: <u>CLOSED LTR</u>	Assigned To: Triage
ID#: 828822	Date issued: <u>JUN 02 2020</u>	Date assigned: 03/19/2020

Addressee: MI Calcote
 Entity: Public Safety, Texas Dept. Of
 Gov't Body: Public Safety, Texas Dept. Of
 Entity's Phone #: () -
 Entity's fax #: () -
 Requestor: Joseph R. Larsen
 Requestor's Phone#: () -
 Requestor's fax #: () -
 Confidential
 Date received: 03/13/2020
 Postmark Date:
45-day deadline: 05/18/2020
 55-day deadline: 06/02/2020
 15-day deadline: 03/25/2020 Late:
 10-day deadline: 03/18/2020 Late:
 10-day ltr.sent: 5-18-2020
 Ack. sent:
 7-day ltr. sent:
 7-day ltr. due:
 305 briefs due:

Description:
 CNG2: Request for all communications regarding Natin Paul (Nate), World Class Holdings, World Class Capital Group, affiliated companies, communications regarding 7800 Cava Place. (ORR 20-0983) Docs

Attachments: 834763 836099 836297 JUN 02 2020

RV2	Drafter	Initials	Draft Due	Simple Due	EZ Due	Date Complete	RV Con	Re-Route	Issue? (Inits)
Y/N	RV 1	<u>JL</u>	04/27/2020	04/02/2020	03/23/2020	_____	Y/N	Y/N	_____
Y/N	RV 2	<u>JDG</u>	_____	_____	_____	_____	Y/N	Y/N	_____
		_____	_____	_____	_____	_____	Y/N	Y/N	_____

Ready to Close: JDG 6/2
 initials/date

Signed: Initials: _____ Date: _____

Docs returned by mail on JUN 02 2020 by: RM

Executive Approval: JDG 6/2
 initials/date

Exception: ~~XXXX~~ Closed Letter



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 2, 2020

Ms. M.L. Calcote
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

Dear Ms. Calcote:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 828822 (ORR# 20-0983).

The Texas Department of Public Safety (the "department") received a request for communications regarding specified topics and a specified address. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. The department also states, and provides documentation showing, it notified the Federal Bureau of Investigation (the "FBI") of the department's receipt of the request for information and of the FBI's right to submit arguments to this office as to why the requested information should not be released.¹ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exception and reviewed the submitted information. We have also received and considered comments submitted by FBI.

We note the requested information is the subject of pending litigation in *Joseph Larsen v. Texas Department of Public Safety*, Cause No. D-1-GN-20-002155, in the 459th Judicial District, Travis County, Texas. Notwithstanding pending litigation, our office generally will issue a determination under Government Code section 552.306 where our office has not previously ruled on the precise information at issue. See Open Records Decision No. 687 at 3 (2011) ("Section 552.306 does not authorize [this office] to refuse to perform the duty to issue an open records ruling simply because the same disclosure question is pending before a Texas Court."). However, in this instance, we note the litigation at issue and the corresponding determination regarding applicability of the claimed exceptions involve factual questions that can be more appropriately—and conclusively—addressed through the

¹ Although the department received the request on March 12, 2020, the department did not notify the FBI of the department's receipt of the request until May 5, 2020. Our office received comments from the FBI on May 15, 2020.

Ms. M.L. Calcote - Page 2

judicial process where the parties may engage in discovery and more fully develop their factual claims and defenses.

Additionally, the failure of DPS to timely notify the FBI of the underlying request and the FBI's provision of substantially redacted comments to the requestor prevents our office from issuing a ruling in accordance with the statutory requirements specified in section 552.306 of the Government Code. *See* Gov't Code § 552.306 (providing that the attorney general shall promptly render a requested decision "consistent with the standards of due process"). Accordingly, we are closing our file assigned ID# 828822 without issuing a decision and will allow the trial court to determine whether the information at issue must be released to the public.

Sincerely,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/rm

Ref: ID# 828822

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Open Records Ruling Tracking Sheet

EXHIBIT C

mtz

File Number: OR-838735-20	Issued as: <i>21007</i>	Assigned To: Triage
ID#: 838735	Date issued: AUG 20 2020	Date assigned: 06/09/2020

Addressee: June B. Harden
 Entity: Attorney General's Office
 Gov't Body: Attorney General's Office
 Entity's Phone #: () -
 Entity's fax #: () -
 Requestor: Joseph R. Larson
 Requestor's Phone#: () -
 Requestor's fax #: () -

Confidential

Date received: 06/03/2020
 Postmark Date:
45-day deadline: 08/06/2020
 55-day deadline: 08/20/2020
 15-day deadline: 06/10/2020 Late:
 10-day deadline: 06/03/2020 Late:
 10-day ltr.sent: **AUG 06 2020**
 Ack. sent:
 7-day ltr. sent:
 7-day ltr. due:
 305 briefs due:

Press Office:

Description:
 JAW9: [redacted] on 05/13/20 re withholding comms re Natin Paul, World
 Class t

Attach
 RV2
 Y/N
 Y/N

Opinions

EZ Due	Date	_____	sue? (Inits)
06/15/2020			

Scanned

lose: _____
 initials/date

Signed: Initials: _____ Date: _____

Docs returned by mail on: **AUG 20 2020** by: *JM*

Executive Approval: _____
 initials/date

Exception: _____

Open Records Ruling Tracking Sheet

EXHIBIT C

MH

File Number: OR-838735-20	Issued as: <i>21007</i>	Assigned To: <i>Triage</i>
ID#: 838735	Date issued: AUG 20 2020	Date assigned: 06/09/2020

Addressee: June B. Harden
 Entity: Attorney General's Office
 Gov't Body: Attorney General's Office
 Entity's Phone #: () -
 Entity's fax #: () -
 Requestor: Joseph R. Larson Confidential
 Requestor's Phone#: () -
 Requestor's fax #: () -
 Press Office:

Date received: 06/03/2020
 Postmark Date:
45-day deadline: 08/06/2020
 55-day deadline: 08/20/2020
 15-day deadline: 06/10/2020 Late:
 10-day deadline: 06/03/2020 Late:
 10-day ltr.sent: **AUG 06 2020**
 Ack. sent:
 7-day ltr. sent:
 7-day ltr. due:
 305 briefs due:

Description:
 JAW9: Request for copy of FBI comments to the AG on 05/13/20 re withholding comms re Natin Paul, World Class Holdings, 7800 Cava Place. (R004417) docs.

Attachments: *4/12/16*

RV2	Drafter	Initials	Draft Due	Simple Due	EZ Due	Date Complete	RV Con	Re-Route	Issue? (Inits)
Y/N	RV 1	<i>MHM</i>	07/16/2020	06/23/2020	06/15/2020	_____	Y/N	Y/N	_____
Y/N	RV 2	_____	_____	_____	_____	_____	Y/N	Y/N	_____
		_____	_____	_____	_____	_____	Y/N	Y/N	_____

Ready to Close: _____
initials/date

Signed: _____
 Initials: _____ Date: _____
 Docs returned by mail on: **AUG 20 2020** by: *JM*

Executive Approval: _____
initials/date

Exception: _____



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 20, 2020

Ms. June B. Harden
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
Post Office Box 12548
Austin, TX 78711-2548

OR2020-21005

Dear Ms. Harden:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. This request was originally received by the Open Records Division of this office and assigned ID #838735. Preparation of the ruling has been assigned to the Opinion Committee of this office.

The Office of the Attorney General (the "OAG") received a brief dated May 13, 2020, submitted by the Federal Bureau of Investigation (the "FBI") asserting that certain communications and information involved in a particular request for information should not be disclosed under subsections 552.108(a)(1) and (2) of the Government Code. The brief recites that a redacted copy was provided to Mr. Joseph Larsen.

You tell us that on May 19, 2020, the OAG received a request from Mr. Joseph Larsen for an unredacted copy of the May 13, 2020 brief. On June 3, 2020, the OAG submitted this request for a decision to give the FBI the opportunity to submit any arguments it may have against the release of its briefing. You explain that the May 13, 2020 brief was submitted under section 552.304 of the Act, and that the "FBI informed this office that it intends to submit arguments to withhold its submission." *See* TEX. GOV'T CODE § 552.304. You tell us the OAG takes no position on any argued exception and requests a decision "regarding the applicability of any argued exceptions as provided by the PIA."

On June 18, 2020, the OAG received a second brief from the FBI reasserting arguments why the communications and information in the underlying request should not be disclosed. However, although it references the OAG's letter of June 3, 2020, it does not present arguments against disclosure of any portion of its May 13, 2020 submission.

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CONFIDENTIAL

HGIC_SUB-00049954

HBOM00055629

We have reviewed the information you submitted under the tab marked "Exhibit B," which is the unredacted brief submitted under section 552.304 of the Government Code. Subsection 552.304(b) provides:

(b) A person who submits written comments to the attorney general under Subsection (a) shall send a copy of those comments to both the person who requested the information from the governmental body and the governmental body. If the written comments submitted to the attorney general disclose or contain the substance of the information requested from the governmental body, the copy of the comments sent to the person who requested the information must be a redacted copy.

TEX. GOV'T CODE § 552.304(b). Without comments explaining why all or part of the May 13, 2020 submission should not be disclosed, we have no basis to conclude whether any written comments in the submission "disclose or contain the substance of the information requested." *Id.* Accordingly, the OAG may not withhold the May 13, 2020 submission on the basis of subsection 552.304(b) or any other unargued exception.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

William A. Hill
Assistant Attorney General
Opinion Committee

WH/jm

Ref: ID# 838735

c: Requestor

Third Party

0283573520
EXHIBIT C
02835735



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

Received by Open Records

JUN 03 2020

June 3, 2020

Justin Gordon
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

Re: Public Information Request No. R004417

Dear Mr. Gordon:

On May 19, 2020, the Office of the Attorney General (the "OAG") received a public information request under the Public Information Act (the "PIA"), Chapter 552, Government Code, from Mr. Joseph Larsen. A copy of the request is attached as Exhibit A.

The requestor seeks an unredacted copy of a brief submitted by the Federal Bureau of Investigation (the "FBI") to the Open Records Division under section 552.304 of the Government Code. The FBI has informed this office that it intends to submit arguments to withhold its submission.

The OAG is submitting this request for a decision to give the FBI the opportunity to submit any arguments it may have against the release of its briefing. *See* Gov't Code § 552.304 (providing that any interested party may submit arguments explaining why requested information should or should not be released). The OAG takes no position on the applicability of any asserted exception. The information at issue is attached as Exhibit B.

The OAG respectfully requests a decision from the Open Records Division regarding the applicability of any argued exceptions as provided by the PIA.

Please do not hesitate to contact me at (512) 475-4558 if you have questions or require additional information.

Sincerely,

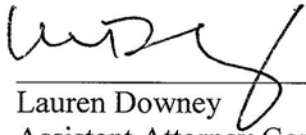
Let for JUNE HARDEN

June B. Harden
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General

c: Mr. Joseph Larsen
Gregor Wynne Arney, PLLC
700 Louisiana St., Ste. 3950
Houston, TX 77002
(w/o enclosures)

Mr. Matthew J. McPhillips
Chief Division Counsel
Federal Bureau of Investigation-San Antonio Division
5740 University Heights Blvd.
San Antonio, TX 78249
(w/o enclosures)

Pursuant to section 552.308(b), this is to confirm the brief at issue was timely placed in intra-agency mail addressed to the Open Records Division on June 3, 2020.



Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General

EXHIBIT A

publicrecords

From: Joseph Larsen <jlarsen@gcfirm.com>
Sent: Tuesday, May 19, 2020 12:14 AM
To: publicrecords
Cc: OGC Webmaster; McPhillips, Matthew J. (SA) (FBI); Gordon, Justin; Hartley, Ann
Subject: Public Information Act request and supporting legal brief
Attachments: 05 18 20 PIA Request for and Legal Brief on obtaining copy of FBI comments wo redactions.pdf

Categories: Printed

Dear Officer for Public Information—

Please see attached Public Information Request and legal brief in support thereof for immediate release of unredacted copy of comments submitted by the FBI to the attorney general on May 13, 2020.

Joseph R. Larsen
GREGOR | WYNNE | ARNEY, PLLC
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700 Louisiana, Suite 3950
Houston, Texas 77002
(713) 306-1937 – Direct
(832) 390-2644 – Office
(832) 390-2655 – Fax
jlarsen@gcfirm.com
www.gcfirm.com