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SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. 24-0162

IN THE SUPREME COURT OF TEXAS

KEN PAXTON, in his official capacity as Texas Attorney General and GREG ABBOTT, in his official capacity as the Governor of the State of Texas,

Petitioners,

v.

American Oversight,

Respondent.

On Petition for Review from the Third Court of Appeals, Austin
COA No. 03-23-00090-CV

RESPONDENT'S BRIEF ON THE MERITS

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REFERENCE NOTATION

American Oversight will cite the record as follows:

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Reporter's Record	1RR [1RR:#]
Petitioners' Petition for Review	Pet. at (page)
Petitioners' Brief	Pet. Br. at (page)
Respondent's Response to the Petition for Review	Resp. at (page)
Petitioners' Brief in the Court of Appeals	Pet. App. Br. at (page)

STATEMENT OF THE CASE

Nature of the Case:	Respondent American Oversight sought issuance of a writ of mandamus to Governor Abbott and Attorney General Paxton, in their official capacities, to require them to release public information that Respondent alleges was withheld from their responses to its Texas Public Information Act ("PIA") requests. CR.713. Petitioners filed pleas to the jurisdiction asserting sovereign immunity from suit. CR.347, 500.
Trial Court:	250th Judicial District of Travis County, Texas The Honorable Daniella DeSeta Lyttle
Disposition in the Trial Court:	The trial court denied Petitioners' pleas to the jurisdiction. CR.1087-88.
Parties in the Court of Appeals:	Petitioners were the appellants. Respondent was the appellee.
Disposition in the Court of Appeals:	The Court of Appeals affirmed, holding that the trial court had jurisdiction to issue writs of mandamus against the Governor and Attorney General as the PIA explicitly grants jurisdiction over all governmental bodies and Respondent pleaded allegations showing Petitioners had refused to provide public information, sufficient to waive sovereign immunity. Further, contrary to Petitioners' claim, the trial court did not require *in camera* review before denying the pleas to the jurisdiction.

Finally, Respondent's mandamus claim was not rendered moot by partial production of records. *Paxton v. Am. Oversight*, 683 S.W.3d 873 (Tex. App.—Austin 2024, pet. pending).

STATEMENT OF JURISDICTION

The Court has jurisdiction under Texas Government Code Section 22.001(a).

ISSUES PRESENTED

The Texas Public Information Act "favors an open and transparent government to ensure the people 'retain control over the instruments they have created.'" *Paxton v. City of Dall.*, 509 S.W.3d 247, 249 (Tex. 2017) (quoting Tex. Gov't Code § 552.001(a)). This policy is based on the principle that the "government is the servant and not the master of the people," Tex. Gov't Code § 552.001(a), and to that end, the Texas Legislature waived sovereign immunity for governmental bodies that refuse to make public information available to a requestor and granted the trial court jurisdiction over those claims. The issues presented are:

1. Whether the Court of Appeals correctly determined that the trial court had jurisdiction to issue a writ of mandamus against each Petitioner.

2. Whether the Court of Appeals correctly determined that Petitioners' continued refusal to provide American Oversight with public information waived sovereign immunity, conferring the trial court with subject matter jurisdiction.

INTRODUCTION

The foundational question before this Court is simple: Is the public truly entitled "to complete information about the affairs of government and the official acts of public officials and employees" under the Public Information Act ("PIA"), Tex. Gov't Code § 552.001(a), or can the Governor and Attorney General effectively exempt themselves from their statutory obligations or judicial review of their compliance? As this Court has acknowledged, the Texas Legislature, in crafting the PIA, "forcefully articulate[d] a policy of open government," *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 675 (Tex. 1995), and commanded that its provisions "shall be liberally construed to implement this policy." *Id*. (quoting Tex. Gov't Code § 552.001(a)). To effectuate a requestor's right to complete information, the Legislature recognized the crucial role of judicial review in enforcing that right. Under the PIA, a requestor may petition a district court for a writ of mandamus against any governmental body for violations of the PIA, Tex. Gov't Code § 552.321(b), and sovereign immunity is waived for those governmental bodies—including the state's executive officials—if they "refuse[] to supply public information." *Id*. at § 552.321(a). In this case, following established statutory process, Respondent American Oversight properly filed a Petition for Writ of Mandamus in the Travis County District Court after Petitioners (the Governor and Attorney General) refused to supply public information in response to seven of Respondent American Oversight's PIA requests.

As the trial court and Court of Appeals both recognized, this is an uncomplicated public records matter raising unexceptional issues. In its well-reasoned decision, the Court of Appeals held that no constitutional nor statutory provision overrides Tex. Gov't Code § 552.321's express grant of jurisdiction to the district courts to issue writs of mandamus to address PIA violations, including against the Governor and Attorney General. *Paxton v. Am. Oversight*, 683 S.W.3d 873, 884 (Tex. App.—Austin 2024, pet. pending). Furthermore, the Court of Appeals confirmed that Respondent met its burden to demonstrate the trial court's jurisdiction by pleading factual allegations that Petitioners have refused to provide public information. In addition to recognizing Respondent's specific, nonconclusory allegations concerning Petitioners' incomplete searches, misidentification of public information, and misapplied PIA exceptions, the Court of Appeals also affirmed—based on established precedent—that Petitioners' reliance on opinions from the Attorney General's Open Records Division ("ORD") to withhold information is subject to review by the trial court. *Id*. at 885-87. Finally, the Court of Appeals found that the vague, incomplete, and conclusory affidavit and declaration provided by the Governor's and Attorney General's Public Information Coordinators did not overcome American Oversight's specific allegations of missing information and other defects, and thus sovereign immunity was waived. *Id*. at 887.

And yet, despite both lower courts seeing through Petitioners' efforts to torture the language of the PIA in an effort to exempt themselves from judicial

review and evade transparency, they continue to press the argument that this case is somehow out of the ordinary. The PIA clearly confers jurisdiction to the district courts over all mandamus actions against governmental bodies, including the Governor and Attorney General. And the PIA also clearly waives sovereign immunity when a governmental body refuses to provide complete information to a requestor, even when that refusal is based on an ORD opinion or stems from a failure of process. The government's brief filed with this Court relies on misreadings of the law and reflects its ongoing campaign to limit the PIA, thereby avoiding the exact transparency and accountability guaranteed to the public by the Legislature.

The Court should deny the Petition and allow this straightforward PIA case to proceed in the trial court. Alternatively, if the Petition is accepted for review, the Court should reject it on the merits.

STATEMENT OF FACTS

The Court of Appeals accurately stated the nature of the case. *See supra* p. xi.

I. The Texas Public Information Act.

The Texas Legislature adopted the PIA to inform the public about government affairs so the people could "retain control over the instruments they have created." Tex. Gov't Code § 552.001(a). The philosophy underpinning the PIA is that "[t]he people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know," *id.*, and therefore, the Act should "be liberally construed in favor of granting a request for information," *id*. at § 552.001(b).

II. American Oversight's Public Information Requests and Petitioners' Responses.

This litigation comprises seven PIA requests Respondent submitted to Petitioners in 2021 and 2022. CR:714-23. In response to two requests, Petitioners claimed they had no responsive information whatsoever; for the other five, the Attorney General's ORD concluded that Petitioners could withhold some or all responsive information.

- Abbott Non-Governmental Accounts (CR:714–15)

  Submitted Jan. 7, 2022, requesting emails regarding official government business from non-governmental addresses attributed to Governor Abbott. CR:731–34. Based on its review of a sample of responsive records, ORD

concluded the Governor could withhold all responsive information. CR:755–57.

- Abbott Texts (CR:716)

  Submitted Feb. 8, 2022, requesting text messages sent or received by Governor Abbott regarding official government business. CR:760–63. Based on its review of a sample of responsive records, ORD concluded that the Governor could withhold some of the responsive information. CR:791–98. The Governor's Office produced 100 pages of heavily-redacted text messages. CR:584–685.

- Abbott Gun Groups (CR:717–18)

  Submitted June 6, 2022, requesting communications between the Governor's Office and pro-gun advocacy organizations. CR:800–04. The Governor's Office claimed it found no responsive information. CR:806.

- Paxton January 6th Communications (CR:718–19)

  Submitted March 25, 2021, requesting emails sent by Attorney General Paxton or Solicitor General Stone from January 6 through January 8, 2021. CR:809–13. The Attorney General produced two records, CR:815–20, and, based on its review of a sample of responsive records, ORD concluded the rest could be withheld. CR:826–28.

- Paxton Non-Governmental Accounts (CR:719–20)

  Submitted August 6, 2021, requesting emails regarding official government business from non-governmental email addresses attributed to the Attorney

General. CR:830–33. Based on its review of a sample of responsive records, ORD concluded all information could be withheld. CR:840–43.

- Paxton Texts (CR:721–22)

  Submitted on May 2, 2022, requesting text messages sent or received by Attorney General Paxton regarding official government business. CR:845–48. The Attorney General produced some responsive records to American Oversight, CR:850–57, and, based on its review of a sample of responsive records, ORD concluded the rest could be withheld. CR:873–75.

- Paxton Gun Groups (CR:722–23)

  Submitted on June 7, 2022, requesting communications between the Attorney General's Office and pro-gun advocacy organizations. CR:865–69. The office claimed it had no responsive information. CR:871.

Concluding that Petitioners' responses failed to provide all public information held by Petitioners, Respondent filed a Petition for Writ of Mandamus. CR:4–163.

III. Trial Court Proceedings.

Petitioners filed Answers generally denying Respondent's claims and asserting a sovereign immunity defense. CR:164–66, 344–46. They subsequently filed Pleas to the Jurisdiction arguing that sovereign immunity applied and challenging the trial court's subject matter jurisdiction. CR:347–66, 500–56. In support, Petitioners provided a bare-bones declaration and an equally bare-bones affidavit from their respective public information officers. CR:367-71; CR:511-13. Respondent opposed, arguing that the governmental bodies had violated the PIA by refusing to provide

public information, thereby waiving sovereign immunity under Tex. Gov't Code § 552.321. CR:557-692.

After a hearing, the trial court ruled in favor of American Oversight and denied both of Petitioners' Pleas. RR:1-39. It effectively held that the affidavit and declaration from Petitioners' respective Public Information Coordinators ("PIC") did not support their assertions that the records provided to American Oversight were complete. CR:1087-88. For example, the trial court concluded that some public records "may have [been] identified . . . as 'non-responsive' and therefore excluded" from review entirely, requests may have been improperly narrowed during the search process, or records may have been improperly withheld as privileged attorney-client communications. CR:1088.

IV. Court of Appeals Proceedings.

Following Petitioners' interlocutory appeal, CR:1089-90, the Court of Appeals upheld the trial court's denial. *Am. Oversight*, 683 S.W.3d at 889. First, the court responded to a new jurisdictional argument advanced by Petitioners for the first time on appeal, that the trial court lacks jurisdiction to issue a writ of mandamus against them as executive officers of the state. *Id*. at 882. Rejecting that position, the court concluded that neither the Attorney General nor the Governor is excepted from Tex. Gov't Code § 552.321(b)'s grant of jurisdiction to the district courts to issue writs of mandamus for violations of the PIA, *id*. at 884. Section 552.321(b), which is specific to the PIA, prevails over Tex. Gov't Code § 22.002(c)'s general grant of authority to the Texas Supreme Court to issue writs of mandamus against executive officers. *See*

Am. Oversight, 683 S.W.3d at 884. In particular, after this Court invited the Legislature to grant district courts jurisdiction over PIA actions in *Sharp*, 904 S.W.2d at 681, the Legislature responded by enacting Section 552.321(b) "to expressly delegate jurisdiction to the district courts." *Am. Oversight*, 683 S.W.3d at 882-83 (citing *Sharp*, 904 S.W.2d at 672). In addition, Section 552.321(b) does not conflict with either Tex. Const. art. V, section 3's permissive language regarding the Legislature's ability to grant original jurisdiction to the Supreme Court,[1] nor art. V, section 8's general grant of jurisdiction to district courts,[2] and neither constitutional provision shields Petitioners from district court jurisdiction. *Am. Oversight*, 683 S.W.3d at 883.

Second, the court rejected Petitioners' sovereign immunity arguments, holding that Respondent "affirmatively pleaded and demonstrated a valid waiver of immunity under the PIA." *Id*. at 887. Specifically, the court recognized that "[t]he evidence is undisputed that [Petitioners] continue to withhold documents responsive to [Respondent's] requests, and [Respondent's] factual allegations include challenges to the completeness of the information that was produced and the correctness of ORD's

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[1] Tex. Const. art. V, section 3 "provides that [t]he Legislature *may* confer original jurisdiction on the Supreme Court to issue writs of . . . mandamus in such cases as may be specified, except as against the Governor of the state' . . . [and] the plain language of this provision is permissive without mandating that the Legislature take any action." *Am. Oversight*, 683 S.W.3d at 883 (cleaned up) (emphasis added).

[2] Tex. Const. art V, section 8 "grants district courts 'exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body.'" *Am. Oversight*, 683 S.W.3d at 883.

letter rulings concerning the claimed exceptions that [Petitioners] rely on to support their withholding of responsive documents." *Id*. at 886. In addition to information Petitioners admit to withholding subject to ORD opinions, the court also pointed to specific allegations supporting inferences that other responses were incomplete. *Id.* at 887. These allegations were "unnegated" by Petitioners, *id*., and thus sovereign immunity had been waived.[3]

The Governor and Attorney General then filed this Petition for Review, seeking review of the Court of Appeals' holdings described above and also raising two new arguments: that Tex. Gov't Code § 552.321(b) is merely a venue provision, and that Petitioners, in their official capacities, are not subject to the PIA. Pet. at 11-13. Upon the Court's request, Respondent filed a Response to the Petition for Review, and without deciding whether to grant or deny the Petition for Review, the Court asked the parties to file briefs on the merits, which they now do.

SUMMARY OF THE ARGUMENT

I. The Court of Appeals properly concluded that the trial court has mandamus jurisdiction over both Petitioners under the plain language of Tex. Gov't Code § 552.321. This section expressly authorizes district courts to issue writs of mandamus against governmental bodies that violate the PIA, establishing both jurisdiction and venue for such actions. The court also ruled that Section 552.321(b), enacted in 1999

[3] The Court of Appeals issued additional holdings in Respondent's favor, not at issue in this appeal. *Id*. at 888-89.

and specific to the PIA, controls over any earlier-enacted, more general statutory directives regarding jurisdiction. Art. V, section 8 of the Texas Constitution establishes default jurisdiction with the district courts, and since there is no exception for the Governor, district court jurisdiction under that provision and Section 552.321 applies. Furthermore, as the Governor and Attorney General are officers for public information, *see* Tex. Gov't Code §§ 552.201(a); 552.221(a), writs of mandamus issued against them in their official capacities are functionally equivalent to those issued against their offices. Accordingly, it was proper for Respondent to name these officers in their official capacities, rather than their offices, in its petition for a writ of mandamus.

II. Both Petitioners have refused to supply public information properly requested by Respondent, thus waiving sovereign immunity under Tex. Gov't Code § 552.321. As both lower courts determined, Respondent adequately alleged defects in Petitioners' responses to its records requests and identified open questions concerning the officials' PIA compliance. Moreover, Petitioners' evidence was insufficient to overcome those allegations and demonstrate that their responses to Respondent's PIA requests were complete or that they had fully complied with the statute. Thus, because genuine questions of material fact remain regarding whether Petitioners have refused to supply public information, sovereign immunity has been waived under the PIA.

ARGUMENT

The Court of Appeals properly determined that, under the PIA, the trial court plainly has jurisdiction over mandamus actions brought against the highest offices, and officers, of this state. *Am. Oversight*, 683 S.W.3d at 884. Its holding is not only

consistent with, but essential to, the very foundation of public citizenry: an informed electorate. Here, Petitioners ask this Court to not only overturn the decision below but blatantly ignore the Texas Legislature's actions and relevant statutory language. This would have the effect, *inter alia*, of placing the Governor and Attorney General essentially outside the scope of the PIA—a result antithetical to Texas's stated commitment to open government. Tex. Gov't Code § 552.001(a).

The language of the PIA is all-encompassing and does not contemplate executive officers operating outside of the law: "The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created." *Id*. To exclude the highest officers in the state from the public's access to their records would thwart the Legislature's intent to subject all executive offices to the PIA statutory scheme, including judicial review of potential violations, leaving these offices free to "decide … what is not good for [the people] to know," Tex. Gov't Code § 552.001(a), without repercussion. The Court should not accept Petitioners' invitation to nullify the Legislature's clear statutory grant of jurisdiction.

The Court of Appeals also properly rejected Petitioners' efforts to challenge the district court's statutorily-granted subject matter jurisdiction. As the district and appellate courts both recognized, the PIA's waiver of sovereign immunity applied to the claims against the Governor and Attorney General, because Petitioners failed to rebut Respondent's clear pleadings of deficiencies in the government's responses to

American Oversight's public records requests. *See Am. Oversight*, 683 S.W.3d at 884. Petitioners seek to trivialize and outright ignore Respondent's allegations of incomplete information, but even their own affidavit and declaration demonstrate defects in their responses that precluded the trial court from granting their pleas to the jurisdiction. This Court need not disturb the Court of Appeals' well-reasoned opinion.

For the reasons set forth below, this Court should deny the Petition, or, if the Court grants the Petition for Review, reject it on the merits.

I. MANDAMUS JURISDICTION OVER PETITIONERS LIES IN THE DISTRICT COURT.

Section 552.321(b)'s plain language confers jurisdiction in the district court for PIA mandamus actions, without exception. This is confirmed by its history, *viz.*, that the Legislature enacted it in response to a specific invitation from this Court to enact a provision conferring jurisdiction on lower courts for PIA mandamus actions. Petitioners' circuitous arguments, which ignore the language and history of Section 552.321(b) while creating a cloud of obfuscation from various unrelated provisions, cannot overcome the PIA's text and obvious legislative purpose.

Recognizing that judicial review is crucial to ensuring that the public can protect its right to public information, the Texas Legislature has waived sovereign immunity for all governmental bodies—including the state's senior-most officials—if they "refuse[] to supply public information" responsive to a Public Information Act ("PIA" or "the Act") request. Tex. Gov't Code § 552.321(a). *See Muir v. Univ. of Texas at Austin*, No. 03-22-00196-CV, 2023 WL 4110843, at *3 (Tex. App.—Austin June 22, 2023, no pet. h.), quoting *City of El Paso v. Abbott*, 444 S.W.3d 315, 322 (Tex. App.—Austin 2014, pet. denied) (the PIA "waives sovereign immunity for requestors seeking a writ of mandamus to compel a governmental body to make information available for public inspection under certain circumstances."). As Petitioners concede, "[j]urisdiction to issue writs of mandamus typically lies in the trial court, unless either a statute or the Constitution dictates otherwise." Pet. Br. at 10; *accord* Tex. Const. art. V, Section 8.

Before the enactment of Tex. Gov't Code § 552.321(b) ("Subsection (b)") in 1999, courts lacked jurisdiction over executive officers for PIA violations. Before 1999, the Texas Code exempted executive officers from mandamus jurisdiction in the district courts and instead, with the exception of the governor, vested that jurisdiction with this Court. Pet. Br. at 11; *see* Tex. Gov't Code § 22.002(c). Before 1999, even this Court had no jurisdiction over the Governor for violations of the PIA, *see* Tex. Gov't Code § 22.002(a); *accord* Pet. Br. at 11. That left a gaping hole—which the Legislature would soon close—in the enforcement of the public information laws.

All that changed in 1999. That year, in response to this Court's invitation in *Sharp*, 904 S.W.2d at 668, the Texas Legislature enacted Subsection (b). Read together in relevant part with Subsection (a), Section 552.321 now reads:

> (a) A requestor … may file suit for a writ of mandamus compelling a governmental body to make information available for public inspection if the governmental body … refuses to supply public information ….
>
> (b) A suit filed by a requestor under this section must be filed in a district court for the county in which the main offices of the governmental body are located.

Subsection (b) thus expressly granted mandamus jurisdiction to district courts in PIA actions against *all* offices in the state—including the offices of the Governor and Attorney General. *See Am. Oversight*, 683 S.W.3d at 884. Because the PIA charges the chief administrative official of each office with compliance, Petitioners are precisely the individuals who should be, and are, subject to mandamus.

Petitioners' argument to the contrary is grounded in a misunderstanding of the constitutional and statutory provisions granting jurisdiction over mandamus actions to the courts. Pet. Br. at 10-13. Tex. Const. article V, § 8 provides the jurisdictional default rule, granting jurisdiction over "all actions," including mandamus actions, to the district courts, unless otherwise granted by law. *See Sharp*, 904 S.W.2d at 671-72 ("District courts are always the courts of exclusive original jurisdiction for mandamus proceedings unless the constitution or a law confers such jurisdiction on another tribunal."). The government argues that article V, § 3, which states that "[t]he Legislature *may* confer original jurisdiction on the Supreme Court to issue writs of . . . mandamus in such cases as may be specified, except as against the Governor of the State," (emphasis added) means that *no court* may issue a writ of mandamus. But this is illogical and ignores art. V, § 8's default grant of jurisdiction to the district courts. This default grant is also entirely consistent with Tex. Gov't Code § 22.002(a), which prohibits the Supreme Court from granting a writ of mandamus against the governor, but does not prohibit the district court from doing so. So while Tex. Gov't Code § 22.002 may specify a jurisdictional scheme for some *non-PIA* cases, in PIA cases art. V, § 8's default grant of jurisdiction to the district courts, combined with Subsection (b)'s grant of mandamus jurisdiction to the district courts, controls. And, as the Court of Appeals rightly noted, Tex. Const. art. V, § 3(a)'s permissive language *allowing* for Supreme Court jurisdiction over mandamus actions does not conflict with Subsection (b)'s express, *mandatory* grant of jurisdiction to district courts. *Am. Oversight*, 683 S.W.3d at 883.

In seeking review, Petitioners essentially assert that Subsection (b) had no effect on jurisdiction, despite the Legislature implementing the statute at the express invitation of this Court in order to clarify jurisdiction for executive officers. Petitioners erroneously assert that: 1) the court below misapplied rules of statutory construction; and 2) Subsection (b) is merely a venue provision conveying no jurisdiction at all (an assertion never argued below, raised for the first time here). *See* Pet. Br. at 14-24.

Not so. The plain language of Subsection (b), the undisputed context in which the Legislature passed the provision, and its being the later-enacted and more specific provision governing the application of mandamus claims in PIA actions to government offices, confirm that it controls this matter. Further, because the Governor and Attorney General are the officials charged with complying with the PIA for their offices, *see* Tex. Gov't Code §§ 552.201(a); 552.221(a), writs of mandamus issued to them in their official capacities are the appropriate means of obtaining records from their offices.

Meanwhile, Petitioners' newly-minted theory regarding venue hinges on multiple implausible assumptions. It is undisputed that, in its 1995 *Sharp* decision, this Court invited the Legislature to enact a statute conferring mandamus jurisdiction for public records actions on lower courts, and that when the Legislature took up the matter, in 1999, it enacted Subsection (b). But according to the Attorney General (who, in other litigation, has admitted Subsection (b) is jurisdictional) and the Governor, in passing Subsection (b), the Texas Legislature agreed to ignore this Court's requests that it address *jurisdictional* issues and instead decided—*sua sponte* and completely coincidentally—that the PIA needed a new *venue* provision. Even more incredibly,

Petitioners then contend that the Legislature, in drafting the venue provision, while expressly stating that every suit against "a governmental body"[4] under Section 552.321(a) "must" be brought in the district court, *id.* § 552.321(b), meant (but apparently forgot) to exclude the offices of Governor or Attorney General. *See* Pet. Br. at 15. This absurd hand-waving is not the law.

a. Subsection (b) Extended District Court Jurisdiction to Executive Officers for PIA Mandamus Actions.

The context in which the Legislature passed Subsection (b) in 1999 is crucial to interpreting its language, as the Court "construe[s] statutory language in context, not in a vacuum." *Texas Windstorm Ins. Ass'n v. Pruski*, 689 S.W.3d 887, 892 n. 5 (Tex. 2024).

In 1995, *A&T Consultants v. Sharp* came before this Court, revealing the problems with the then-current jurisdictional grants for mandamus actions against executive officers under the Texas Open Records Act ("TORA"), the predecessor to the PIA. 904 S.W.2d at 671-72. This Court identified two issues as it related to mandamus claims brought against an executive officer under TORA. First, while the default general grant of mandamus jurisdiction to the district courts under Tex. Const.

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[4] As the Court of Appeals held, "The plain meaning of 'governmental body' as defined in the PIA includes the Office of the Governor and the OAG." *See* [Tex. Gov't Code] § 552.003(1)(A)(i) (defining "governmental body" to include offices in the executive branch); *cf. id.* § 552.003(1)(B)(i) (expressly excluding judiciary from definition of "governmental body" for purposes of PIA)." *Am. Oversight*, 683 S.W.3d at 882. Petitioners concede the same. Pet. Br. at 18.

article V, § 8 applied to most TORA suits, jurisdiction to issue writs of mandamus against executive offices for public records violations lay solely in the Texas Supreme Court. *Sharp*, 904 S.W.2d at 672; *see also* Tex. Gov't Code § 22.002(c). The Court noted that "[a]ny exception to this rule would require express statutory authorization by the legislature naming district courts as the proper fora." *Sharp*, 904 S.W.2d at 672. In *Sharp*, the majority and dissent each raised concerns over this anomaly, with their principal disagreement being whether then-existing law truly forced this unfortunate result, such that the Legislature should fix it (the majority's ruling), or if the majority misread TORA and unnecessarily thrust this illogical burden on the Supreme Court (the dissent's position). *Compare id.* at 681 (majority urging the Legislature to "exercise its constitutional authority to specify which courts are to have jurisdiction over remedial actions to enforce TORA") *with id*. at 682 (Hecht, J., dissenting) (stating the majority's construction was implausible and noting "[t]his Court has plenty to do without taking upon itself the *sole* responsibility for reviewing every open records dispute involving six large state offices.") (emphasis in original).

Second, the Court questioned whether jurisdiction over an "office" also conveyed jurisdiction over an an executive officer as the "public records officer" of a governmental body. Recognizing that "[a] literal application of the mandamus provision" against a *governmental body*, when the statute's duties fall to the *officer*, is technically "unworkable," in *Sharp*, this Court was nonetheless comfortable with the legal fiction: "This discrepancy [between an office and an officer] can be overlooked in most cases, and courts can treat petitions for writ of mandamus against governmental

bodies and against public records officers interchangeably."[5] *Sharp*, 904 S.W.2d at 681. The Court's only concern was that, "in a few proceedings the exact identity of the respondent matters for purposes of jurisdiction . . . ." *Id.* Thus, this Court invited the Legislature to both confer jurisdiction in the lower courts and clarify whether executive officers may be sued in mandamus. *See id.*

The Legislature responded to the call and dealt with each of the issues identified in *Sharp* in one fell swoop: by passing Subsection (b), extending mandamus jurisdiction in the district courts to *all* executive offices and, by extension, the official within the office charged with complying with public records law. Subsection (b) provides in pertinent part: "A suit [for mandamus] filed by a requestor under this section must be filed in a district court for the county in which the main offices of the governmental body are located." Tex. Gov't Code § 552.321(b). As the Court of Appeals correctly observed, the Legislature enacted Subsection (b) in response to this Court's call to grant "express statutory authorization . . . naming district courts as the proper fora" for mandamus actions against *all* executive officers under the PIA—without any carve outs for the Governor or Attorney General. *Am. Oversight*, 683 S.W.3d at 882-84 (quoting *Sharp*, 904 S.W.2d at 672). In so doing, the Legislature also did away with the sole concern of this Court with respect to the legal fiction of treating

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[5] That Petitioners substituted Provisional Attorney General Scott for Attorney General Paxton in this matter when the latter was facing impeachment proceedings underscores this logic and belies the good faith of Petitioners' argument. *See* Br. for Appellants, June 7, 2023 (caption listing "John Scott in his Official Capacity as Provisional Texas Attorney General" among appellants).

governmental bodies and public records officers interchangeably for mandamus, as the distinction no longer matters for jurisdiction purposes under Subsection (b). *See Sharp*, 904 S.W.2d at 681.

i. The Grant of Jurisdiction to the District Courts was Clear, Express, and Contained No Exceptions.

In construing Subsection (b), the Court's "primary objective is to ascertain and give effect to the Legislature's intent . . . look[ing] to the plain meaning of the statutory terms, *informed by [the] context*" in which the provision was passed. *Morath v. Lampasas Indep. Sch. Dist.*, 686 S.W.3d 725, 734 (Tex. 2024), reh'g denied (Apr. 19, 2024) (emphasis added). Petitioners, ignoring both the plain language and context, argue that, because Subsection (b) does not "express[ly]" mention 22.002(c) or explicitly overrule *Sharp*, the Legislature's grant of district court jurisdiction at this Court's invitation somehow fell short. Pet. Br. at 16-18. But no rule of construction says that, when the Legislature responds to a specific invitation from this Court by enacting a statute, the Legislature must expressly mention other statutes or judicial precedent. Petitioners' pedantic claim ignores that Subsection (b) expressly places original mandamus jurisdiction over *all* PIA actions, without exception, in the district courts: "[a] suit filed by a requestor under this section must be filed in a district court . . . ." Tex. Gov't Code § 552.321(b).

If the Legislature had wanted to carve an exception for offices of the Governor and Attorney General, it could have done so. *See Am. Oversight*, 683 S.W.3d at 880 (citing *Presidio Indep. Sch. Dist. v. Scott*, 309 S.W.3d 927, 930 (Tex. 2010)); *see also*

Am. Oversight, 683 S.W.3d at 883 (*quoting In re Allen*, 366 S.W.3d 696, 706 (Tex. 2012) (origin. proceeding) ("We presume the Legislature is aware of relevant case law when it enacts or modifies statutes.")). Accordingly, the 1999 PIA amendment vesting jurisdiction in the district courts "'is presumed to have been enacted by the legislature with complete knowledge of the existing law and with reference to it.'" *See In re Allen*, 366 S.W.3d at 706 (quoting *Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 301 (Tex. 1990)). It is absurd to suggest that, after this Court beseeched the Legislature "to specify which courts are to have *jurisdiction* over remedial actions to enforce [the PIA]," *Sharp*, 904 S.W.2d at 681 (emphasis added), the Legislature added Subsection (b) to the PIA coincidentally and without any effect on jurisdiction.

Petitioners' position would also improperly render Subsection (b) superfluous. *See Hunter v. Ft. Worth Cap. Corp*, 620 S.W.2d 547, 551 (Tex. 1981) ("[T]he legislature is never presumed to do a useless act."). Before the 1999 amendment, district courts already had jurisdiction over most PIA actions under Article V, Section 8, of the Texas Constitution. *See Sharp*, 904 S.W.2d at 671-72 (recognizing default jurisdiction in district courts, except as to executive officers). Subsection (b) was thus unnecessary unless it was intended to address this Court's call in *Sharp* to add district court jurisdiction over executive officers, as well. *See id*. at 681.[6]

[6] Petitioners' claim that Subsection (b) was passed to provide venue under the PIA is addressed in Section I.b, *infra*.

If Subsection (b)'s plain language left any ambiguity (it does not), that ambiguity would be settled by undisputed history. Petitioners do not advance any evidence that the Legislature decided to enact Subsection (b) for some coincidental reason or frolic unrelated to *Sharp*. This Court must presume the Legislature was fully aware of the *Sharp* Court's call for the Legislature to "reconsider" a statutory scheme which requires the Supreme Court to exclusively "review nondisclosure decisions by six State officers." *Sharp,* 904 S.W.2d at 682 (Hecht, J., dissenting). *See also id*. at 672 (majority observing the change would require "express statutory authorization by the legislature naming district courts as the proper fora."). In enacting Subsection (b), the Legislature recognized and addressed this issue.

ii. Subsection (b) is the Later Enacted, More Specific Statute.

The court below correctly determined that, even if there were a statutory conflict with Texas Government Code § 22.002(c), Subsection (b) is both the later and more specific, rather than general, provision, as it applies specifically to writs of mandamus under the PIA, including those against executive department officers. *Am. Oversight*, 683 S.W.3d at 882-83. In arguing that Subsection (b) does not apply to them, Petitioners contend that the Court of Appeals "misapplied the general/specific canon" of statutory construction when it held that Subsection (b)'s direction that all PIA mandamus actions be brought in a district court "trumped" Section 22.002's direction that suits against executive officers [except the Governor] be brought in the Texas Supreme Court. Pet. Br. at 14. They repeat variations of this argument throughout their

Petition. *See*, *e.g.*, *id*. at 19-21,[7] 23. But the court below correctly applied the general/specific canon because there is no evidence whatsoever that the Legislature intended the older, more general statute, Tex. Gov't Code § 22.002(c), to trump the newer, PIA-specific statute, Tex. Gov't Code § 552.321(b), and hypothesizing stories about why the Legislature might have gone to the trouble of enacting a superfluous new venue provision while ignoring the actual problem identified by this Court is untethered from language, logic, or legislative context.

Section 22.002(c), the older provision, is general.[8] It sets forth a default rule applicable to mandamus actions arising under a broad range of substantive statutes. But Section 552.321(b), the newer (1999) provision enacted in response to a recent Texas Supreme Court decision, is specific to the PIA. By its terms, Subsection (b) applies, without exception, to all mandamus actions compelling "a governmental body. . . to make information available for public inspection . . . ." *Id.* § 552.321(a). The PIA

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[7] Petitioners' reliance on *Hargett v. McDaniel*, 717 S.W.2d 688 (Tex. App. – Texarkana 1986, no writ), is misplaced. In *Hargett*, the Court of Appeals of Texas, Texarkana, found that Section 22.002 "constitute[d] a limitation on the general powers granted by [Tex. Gov't Code §] 22.221 and [Tex. Elec. Code §] 273.061." *Id*. at 690. But unlike the analysis of Subsection (b) in this case, in *Hargett* there was no later-enacted provision to consider, as the Legislature passed all three provisions at issue in *Hargett* in the same session. *See* Acts 1985, 69th Leg., ch. 480, §1; ch. 211, § 1. In the instant case, in contrast, to determine which provision applies, the Court must take into account the Legislature's clear intent, post-*Sharp*, that Subsection (b) apply to "all" governmental bodies subject to the PIA including executive offices. *See Texas Windstorm Ins. Ass'n*, 689 S.W.3d at 892 (the legislature is presumed to have knowledge of cases and act accordingly).

[8] Section 22.002(c) was enacted in 1985. Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

definition of "governmental body" includes Petitioners' offices, *id*. § 552.003(1)(A)(i) (". . . institution, agency, or office that is within . . . the executive or legislative branch of state government and that is directed by one or more elected or appointed members[.]"). This is exactly the type of "more detailed, specific construct[ion]" of a statute that applies "over section 22.002(c)'s general provisions and limitations." *See In re Allcat Claims Serv., L.P.*, 356 S.W.3d 455, 471 (Tex. 2011) ("[T]he Tax Code expressly provides not only which courts have jurisdiction to provide relief . . . but also addresses whether those courts are authorized to provide mandamus or other similar relief.").

When a court interprets conflicting statutes, "the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail." Tex. Gov't Code § 311.026(b). Here, the general provision, § 22.002(c), is the *earlier* enactment, and the Legislature has nowhere manifested any intent whatsoever that the general provision should prevail over more specific, later-enacted statutes. Like the Tax Code in *Allcat*, the PIA's more recent and specific provision granting express authorization to the district court supersedes the general grant under § 22.002(c). Thus, the Court of Appeals correctly held, with respect to any potential statutory conflict with Tex. Gov't Code § 22.002(c), that Subsection (b) is both the later and more specific, rather than general, provision, as it applies specifically to writs of mandamus under the PIA, including those against executive department officers. *Id.* at 882-83.

iii. Subsection (b) Extended District Court Jurisdiction to Executive Officers, Not Just Offices.

In a new argument not raised in the trial court or in the Court of Appeals, Petitioners object to the district court's jurisdiction because they are office holders and not the "governmental body" specified for jurisdiction in Subsection (b). *See* Pet. Br. at 17-18. This new argument fails, because it is well-settled law that a suit against an individual in their official capacity is the equivalent of a suit against their office, and the Legislature made sure to eliminate any scenarios in which a distinction between officer and office would matter for PIA purposes by passing Tex. Gov't Code § 552.321(b). To interpret Subsection (b) to exclude officers from mandamus actions for violations of the PIA would go against the Legislature's directive to construe the law liberally in favor of the public's right to information.

"It is fundamental that a suit against a state official is merely 'another way of pleading an action against the entity of which [the official] is an agent.'" *Texas A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 844 (Tex. 2007) (quoting *Kentucky v. Graham*, 473 U.S. 159, 165 (1985))*; see also Moore v. Scott*, No. 01-95-00586-CV, 1995 WL 678909, at *1 (Tex. App.—Houston [1st Dist.] Nov. 16, 1995, no writ) (not designated for publication). When litigation against an individual in their official capacity implicates state action or the sovereign's liability, then the action "'is, in all

respects other than name, . . . a suit against the entity.'" *Koseoglu*, 233 S.W.3d at 844 (quoting *Graham*, 473 U.S. at 166).[9]

This is logical in the PIA context, as the offices of the Governor and the Attorney General are each governmental bodies (i.e., "a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members"). Tex. Gov't Code § 552.003(1)(A)(i). Also in the PIA context, each governmental body in the state has a designated officer for public information who is charged with the responsibility of providing to the public the records of that office. The officer for public information required to produce public records is the chief administrative officer of an office. *See* Tex. Gov't Code §§ 552.201(a) ("chief administrative officer of a governmental body is the officer for public information" who must produce records), and § 552.221(a) ("[a]n officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer."). Because the Governor and Attorney General are the chief administrators of their offices, they are the officers for public information to whom records requests are properly addressed.

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[9] Petitioners cite *Patel v. Tex. Dep't Licensing & Regulation*, 469 S.W.3d 69, 76 (Tex. 2015), to argue that officers and offices cannot be conflated, Pet. Br. at 22-23, but unlike here, that case dealt with *ultra vires* acts. Of course, if an action is *ultra vires*, the officer is acting outside the scope of his employment and the two cannot be conflated. There is no such claim here.

When that officer fails to provide records as required by law, the remedy is an order for a writ of mandamus against that individual. *See* Tex. Gov't Code § 552.321; *see also Moore,* No. 01-95-00586-CV, 1995 WL 678909, at *1 ("A mandamus action will lie against a person who has a ministerial duty to act on behalf of a 'governmental body.'"). For this reason, this Court has upheld mandamus against the chief administrative *officer* of an office when the *office* has refused to provide public records. *See Sharp*, 904 S.W.2d at 673-74 (upholding mandamus jurisdiction against State Comptroller).

In passing Subsection (b), the Legislature did as this Court requested in *Sharp,* and eliminated any instances where "the exact identity of the respondent [would] matter[]", 904 S.W.2d at 681, thereby leaving district courts free to treat mandamus petitions against public records officers as if they were against the governmental body. Accordingly, the Court of Appeals' conclusion that the Governor and Attorney General "in their official capacities as officers of governmental bodies" are properly subject to the trial court's jurisdiction in this matter, *Am. Oversight*, 683 S.W.3d at 884, is proper and consistent with the statute, including this Court's interpretation and the Legislature's amendment.

Tellingly, Petitioners' own actions in this case show that they see no distinction between the named Governor and Attorney General and their offices. By asserting sovereign immunity, Pet. Br. at 8, 15-17, which is available only to the governmental body, *see Nazari v. State*, 561 S.W.3d 495, 500 (Tex. 2018) (the doctrine "prohibits suits against the state," not individuals), Petitioners have already admitted that this

mandamus action against them in their official capacities is equivalent to a suit filed against their offices. Furthermore, Petitioners relied on their status as "governmental unit[s]" under Texas Civil Practice and Remedies Code § 51.014(a)(8) to bring their interlocutory appeal below. *See* Br. for Appellants, June 7, 2023, at 13.

As the court below recognized, by passing Subsection (b), the Legislature resolved that issue. *Am. Oversight*, 683 S.W.3d at 883. To interpret Section 552.321(b) so narrowly as to exclude mandamus actions against officers acting in their offifical capacity would be antithetical to the Legislature's command to interpret the PIA in favor of transparency and accountability. Tex. Gov't Code § 552.001(a). It would render the PIA unenforceable against the Attorney General or Governor; their compliance with the PIA would depend solely on an "honor system" not subject to court authority and they would have unfettered discretion to "decide what is good for the people to know and what is not good for them to know." *Cf. id.* (repudiating the idea that public officials have such discretion).

b. Subsection (b) is Jurisdictional, Not Merely Limited to Venue.

Petitioners also try to evade jurisdiction by claiming—for the first time in connection with their appeal to this Court—that Subsection (b) is merely a "venue provision."[10] Pet. Br. at 15-16; 21-23. Their argument that the provision is limited to

[10] While jurisdiction refers to the court's authority over the case, venue relates solely to location. *See Carpenter v. Daspit L. Firm, PLLC*, No. 01-22-00282-CV, 2023 WL 3956861, at *7 (Tex. App. —Houston [1st Dist.] June 13, 2023, no pet.).

venue defies all known principles of statutory interpretation, ignores the prior existence of applicable (and perfectly sufficient) venue statutes, and would yield absurd results.[11]

i. District Court Mandamus Venue Already Existed Long Before the Enactment of Subsection (b).

As an initial matter, a provision can both grant jurisdiction *and* provide for venue. *See Wichita County v. Hart*, 917 S.W.2d 779, 783 (Tex. 1996) ("The language of some [venue provisions] unambiguously indicates that the legislature intended the provisions to be jurisdictional in nature."),[12] *cited* in Pet. Br. at 15. Here, district court venue for mandamus actions was already well-established under a generally applicable Code provision before the passage of Subsection (b), which changed nothing as to venue. *Compare* Tex. Civ. Prac. & Rem. Code § 15.002(a)(3) ("all lawsuits shall be brought . . . in the county of defendant's principal office in this state, if defendant is not a natural person") *with* Subsection (b) ("for the county in which the main offices of the governmental body are located").[13] In other words, before the adoption of

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[11] Petitioners' argument comes with particular ill-grace given the Attorney General's prior admission that Subsection (b) is indeed jurisdictional, expressly affirming in another court filing that it provided "for district court *jurisdiction* over mandamus suit related to [PIA] requests." *See* Resp. to Pet. for Writ of Mandamus of Resp't and Real Party in Interest Tex. Bd. of Pardons and Paroles at n.7, *In Re Zahir Querishi, Relator*, (No. 17-0795), 2018 WL 389217 (Tex. 2018) (emphasis added).

[12] Petitioners rely on *Wichita County*, 917 S.W.2d at 781, and *Dallas Area Rapid Transit v. Johnson*, No. 005-00-00657-CV, 2001 WL 88195 (Tex. App. – Dallas Jan. 26, 2001, no pet.), but neither supports their argument. The provisions in those cases strictly addressed venue: they appeared under code section titles denominated as venue provisions, and were permissive. Furthermore, unlike Subsection (b) here, under those provisions other courts had concurrent jurisdiction.

[13] Petitioners assert that Tex. Civ. Prac. & Rem. Code § 15.002(a)(3) does not apply to "executive officers." Pet. Br. at 22. Even if true, other provisions predating Subsection

Subsection (b), a plaintiff knew precisely where geographically to bring suit, and Subsection (b) yielded no new geographical options.[14] Thus, reading Subsection (b) as merely a venue provision would mean the legislation—passed in specific response to this Court's *Sharp* decision inviting the Legislature to grant jurisdiction to lower courts—accomplished nothing. *See Hunter*, 620 S.W.2d at 551 ("[T]he legislature is never presumed to do a useless act"). As the legislature cannot be presumed to do a useless act, Tex. Gov't Code § 552.321(b) *cannot* be merely a venue provision. As its plain language and legislative context confirm, it also confers jurisdiction.

(b) would have dictated the same venue: the county in which the main offices of the governmental body are located, as that is where the violation of the PIA would have occurred. *See* Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) ("all lawsuits shall be brought . . . in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred."). Each of the six executive officers, Tex. Const. art. IV, § 1, has their principal/main office in Travis County. *See* Tex. State Agencies & Departments, https://www.texas.gov/texas-state-agencies-departments/ (last visited Oct. 4, 2024). Thus, venue for the six executive officers before the passage of Subsection (b) would have been the same as it is now: Travis County.

[14] Petitioners assert that to the extent the language in Subsection (b) and the general venue statute are the same, this "confirms that [Subsection (b)] addresses venue, not jurisdiction." Pet. Br. at 22. This flawed reasoning begs the question: why include a new venue provision if it's the same? The logical answer is that the new provision was intended to respond to this Court's request in *Sharp*, 904 S.W.2d at 681, and—like many such provisions—addresses both jurisdiction and venue.

ii. The Language, Purpose, and Consequential Analysis of Subsection (b) Confirm that it is Jurisdictional.

In determining whether a statute confers jurisdiction, venue, or both, Texas courts look to the following factors: (1) the statutory language used; (2) the presence or absence of specific consequences of non-compliance; (3) the statutory purpose; and (4) the consequences that would result from each interpretation. *See Tex. Mut. Ins. Co. v. Chicas*, 593 S.W.3d 284, 287-88 (Tex. 2019). Viewed against these factors, Subsection (b) clearly confers jurisdiction.

1. The Statutory Language is Clear and Unambiguous.

The language of Subsection (b) is simple and plain: "A suit filed by a requestor under this section must be filed in a district court for the county in which the main offices of the governmental body are located." Tex. Gov't Code § 552.321(b); *see also Texas Nat. Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 854 (Tex. 2002) ("Legislative consent [for subject matter jurisdiction] must be expressed in 'clear and unambiguous language.'"). A PIA suit against every governmental body—without exception—"must" be brought in district court.

And the language of Subsection (b) cannot be divorced from the context in which it was passed, *Morath*, 686 S.W.3d at 734—after a specific request by the judicial branch for the Legislature "to specify which courts are to have *jurisdiction* over remedial actions to enforce [the PIA]." *Sharp*, 904 S.W.2d at 681 (emphasis added). The word "venue" is not once mentioned in the *Sharp* decision. *See id*. The legislative intent that the statute be jurisdictional could not be more clear.

The only logical interpretation of Subsection (b)'s text, taken in its context, is that it means what it says and (1) confers jurisdiction in the district courts over *all* governmental bodies, and (2) jurisdiction over the public information officer charged with providing records in that office. Thus, this factor—the most important, *Texas Windstorm Ins. Ass'n*, 689 S.W.3d at 891—weighs heavily in favor of jurisdiction.

2. The Consequences for Non-Compliance Demonstrate that the Statute is Jurisdictional.

If a statute requires dismissal for failure to comply, that weighs in favor of finding that it is jurisdictional. *Texas Windstorm Ins. Ass'n*, 689 S.W.3d at 892 (citing *Chicas*, 593 S.W.3d at 289 (Tex. 2019). Failure to file a mandamus action in the district court has in fact resulted in dismissal of multiple cases, as no other court has original jurisdiction for PIA claims. *See In re Jones*, No. 01-22-00117-CR, 2022 WL 2203664, at *1 (Tex. App.—Houston [1st Dist.] June 21, 2022, no pet.) (not designated for publication) (dismissing petition for mandamus against the Attorney General because the Court of Appeals "lack[s] jurisdiction," which the PIA grants to the district court); *see also In re Brown*, No. 04-17-00803-CR, 2017 WL 6344825, at *1 (Tex. App.—San Antonio Dec. 13, 2017, no pet.) (not designated for publication); *In re Norman*, No. 13-17-00662-CV, 2017 WL 6047714, at *1 (Tex. App.—Corpus Christi–Edinburg Dec. 4, 2017, no pet.) (not designated for publication). This factor thus also weighs in favor of jurisdiction.

3. The Statutory Purpose is Plainly Jurisdictional.

As discussed above, *supra* Section I.a, Subsection (b) was passed to remedy the jurisdictional issue this Court recognized in *Sharp*. *See* 904 S.W.2d at 681. The law presumes that the Legislature knew about this Court's request in *Sharp*. *See In re Allen*, 366 S.W.3d at 706. Consequently, this Court can only reasonably conclude that the Legislature was addressing the problem identified in *Sharp*, not that the Legislature, *sua sponte* and out of the blue, decided instead merely to tackle venue (which was not even a problem) while leaving jurisdiction untouched. Venue was already clearly established under generally applicable Code provisions, and this Court had expressed no concerns that a plaintiff seeking PIA relief would not have known where, geographically, to file an action. Moreover, the passage of Subsection (b) did not change venue for PIA actions, and the Legislature is never presumed to have undertaken a useless act. *See supra* Section I.a.i. Viewed against the backdrop of *Sharp*, there is no way to logically conclude that Tex. Gov't Code § 552.321(b) was passed for any other purpose than to specify that the trial courts should "have jurisdiction over" all mandamus actions for violations of the PIA, *Sharp*, 904 S.W.2d at 681, and thus this factor clearly weighs in favor of jurisdiction.

4. <u>The Consequences of the Court of Appeals' Interpretation are Logical and Consistent with the Legislature's Intent, While the Consequences of Petitioners' Interpretation Would Shield the Governor and Attorney General from the PIA While Burdening the Judiciary.</u>

The Court of Appeals properly determined that Subsection (b) was passed in response to this Court's request in *Sharp* in order to bring all state offices into

conformity with the rest of the PIA and relieve the Court of the burden of original jurisdiction over actions against executive officers. *Am. Oversight*, 683 S.W.3d at 883.

Petitioners' interpretation. The consequences of adopting Petitioners' view, that Subsection (b) merely sets venue, would be stark. While Petitioners assert they "do not maintain that the Governor and Attorney General are entirely exempt from the requirements of the PIA. Public officials are *always* subject of the requirements of the law – simply 'because it is the law,'" Pet. Br. at 23 (citation omitted), that is *precisely* what they are maintaining with respect to the Governor and his office. The effect of their interpretation would be to immunize the Governor's office from compliance with the PIA entirely and make the Governor completely unaccountable to any level of judicial review. And, with respect to other executive officers, as Justice Hecht observed in his dissent in *Sharp*, 904 S.W.2d at 682 (Hecht, J., dissenting): "[t]his Court has plenty to do without taking upon itself *sole* responsibility for reviewing every open records dispute involving six large state offices." (emphasis in original). A determination that Subsection (b) is merely a provision of venue would bring all PIA actions against the non-Governor executive officers back under the exclusive original jurisdiction of the Supreme Court.

Furthermore, because of the role of the Attorney General's ORD in issuing decisions about PIA requests directed to other governmental bodies, adopting Petitioners' position would also lead to the absurd and redundant situation where the "Attorney General potentially could be a petitioner and a respondent in simultaneous actions, arising out of the same controversy and open records decision, in two separate

courts." *Sharp*, 904 S.W.2d at 687 (Hecht, J., dissenting). This redundancy would place an even larger burden on the judical system.

The Court of Appeals' interpretation. In contrast, holding Subsection (b) to be jurisdictional would enable the PIA to work as the Legislature intended and as the people of Texas deserve. The consequences of upholding District Court jurisdiction for *all* governmental bodies addresses the problems identified by this Court almost three decades ago in *Sharp*. *See Am. Oversight*, 683 S.W.3d at 883. Failure to find Subsection (b) to be jurisdictional would ignore the plain meaning of the statute ("all offices" and "must be brought") and would gut the PIA's very purpose: to ensure that the government remains "the servant and not the master of the people" and that the government is not given rein "to decide what is good for the people to know and what is not good for them to know." Tex. Gov't Code § 552.001(a).

All factors taken together demonstrate that Subsection (b) provides district court jurisdiction over Petitioners, not just venue. This Court should see through Petitioners' weak efforts to complicate a very simple grant of jurisdiction by the Legislature, and decline to take up this Petition. Alternatively, if the Court grants the Petition for Review, it should decline to adopt Petitioners' position on the merits.

II. SOVEREIGN IMMUNITY HAS BEEN WAIVED AS TO BOTH THE GOVERNOR AND ATTORNEY GENERAL.

As both the trial court and Court of Appeals recognized, this action is an uncomplicated PIA matter raising unexceptional issues. *See Am. Oversight*, 683 S.W.3d at 887. The PIA's plain language waives the general grant of sovereign

immunity if a governmental body "refuses to supply public information or information that the attorney general has determined is public information that is not excepted from disclosure" in response to PIA requests. Tex. Gov't Code § 552.321(a); *see also City of Hous. v. Hous. Mun. Emps. Pension Sys.*, 549 S.W.3d 566, 583 (Tex. 2018) (Section 552.321(a) "clearly waiv[es sovereign] immunity" for violations of the PIA). It is not enough for a governmental body to simply provide some responsive records—the information provided to the requestor must be "complete." *Id*. at § 552.001(a). Any "unwillingness" to supply complete public information constitutes "refusal" under the Act. *City of El Paso*, 444 S.W.3d at 324. Even if a petitioner lacks exact details of the governmental body's refusal to provide public information at the initial pleading stage, a petition that provides more than a "[m]ere reference" to the Act is sufficient at the plea to the jurisdiction stage. *Tex. Dep't of Crim. Just. v. Miller*, 51 S.W.3d 583, 587 (Tex. 2001). At this stage, the court "must view [Respondent's] unnegated jurisdictional allegations of fact as true and the jurisdictional evidence in the light most favorable to" Respondent. *Am. Oversight*, 683 S.W.3d at 887. Here, both lower courts concluded that the petition's allegations supported the inference that Petitioners' responses to the PIA requests are incomplete, in violation of the PIA.

Petitioners attempt to obfuscate this fact by arguing that the pleading standards to seek a writ of mandamus under the PIA require clarification. Pet. Br. at 24. But the requirements are straightforward, and American Oversight has more than met its pleading burden. Rather, Petitioners have not met their initial burden to "meet the summary judgment proof standard for [their] assertion that the trial court lacks

jurisdiction" by showing evidence that they are *not* withholding public records. *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 635 (Tex. 2012).[15] If, and only if, a governmental body introduces evidence meeting its burden of production does the burden shift to the plaintiff to rebut that evidence. *Id*. And at the plea to the jurisdiction stage, the court must "construe the pleadings liberally in favor of the [requestor]." *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). Petitioners did not make that evidentiary showing here. In contrast, Respondent has clearly pled factual allegations that Petitioners continue to refuse to provide public information, in violation of the PIA, and thus sovereign immunity has been waived. Petitioners' efforts to evade judicial review of their PIA violations should be rejected.

a. Petitioners' Reliance on ORD Decisions to Withhold Records Constitutes Clear Refusals to Produce Information.

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[15] Petitioners rely on a case discussing the pleading requirements for a takings claim, rather than a PIA violation, to attempt to shift the initial burden to the party filing a Petition for Mandamus under the PIA, rather than the governmental body. Pet. Br. at 26 (citing *Matzen v. McLane*, 659 S.W.3d 381 (Tex. 2021)). According to the government, *Matzen* holds that "the burden is on *requestors* to bring their claims within the PIA's waiver of sovereign immunity—not on government officials to disprove them" Pet. Br. at 26 (emphasis in original). However, this argument is only relevant to the second analytical step in a PIA action, as a requestor's evidentiary burden only triggers if the governmental body fails to meet its own initial burden. At the plea to the jurisdiction stage in a PIA action, the government must first affirmatively prove that the trial court lacks jurisdiction over the case. *See Garcia*, 372 S.W.3d at 635. If they fail, the requestor then has the "burden to plead facts that affirmatively state a viable claim," *Matzen*, 659 S.W.3d at 394. *Matzen* does not exempt the governmental body from meeting its own initial burden, and Petitioners' argument that they bore no burden whatsoever in their own plea to the jurisdiction is unsupported by law.

It is undisputed that Petitioners are withholding records responsive to the Abbott Non-Governmental Accounts Request, Abbott Texts Request, Paxton January 6th Communications Request, Paxton Non-Governmental Accounts Request, and Paxton Texts request pursuant to ORD decisions. CR:714-27. These withholdings are a clear refusal to provide public information. *Muir*, 2023 WL 4110843, at *4; *see also City of El Paso*, 444 S.W.3d at 324 ("Refuse' in [the PIA] context means to 'show or express a positive unwillingness to do or comply with.'") (citing *Webster's Third New Int'l Dictionary* 1910 (2002)). Refusals—even those pursuant to an ORD decision—are subject to judicial review, and thus, Petitioners are unable to meet their burden to defeat the trial court's jurisdiction over this action. *See Garcia*, 372 S.W.3d at 635.

ORD decisions are subject to judicial review. *Kallinen v. City of Houston*, 462 S.W.3d 25, 28 (Tex. 2015). A governmental body cannot "equate[ ] information that is public with information that has been determined by the Attorney General to be public." *Id*. at 28; *see also* Tex. Gov't Code § 552.001(a) ("[t]he people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know."). And yet that is exactly what Petitioners argue—that the mere act of "abid[ing] by the" ORD process necessarily relieves the governmental body of its statutory obligaton to provide complete information and, moreover, removes it from any oversight by the judiciary. Pet. Br. at 28.

This cannot be true. The mere fact that the Governor or Attorney General has consulted ORD before refusing to provide public information does not convert a refusal

into a non-refusal. ORD review does not provide an "advice-of-counsel" defense to a PIA mandamus action. The PIA did not confer upon ORD unreviewable authority to decide what is good for the people to know and what is not good for the people to know, or to transform public information into non-public information by rendering incorrect advice. As discussed *infra*, the sole protection that following ORD's advice provides is from an assessment of costs and fees.

Furthermore, Petitioners' argument is particularly illogical because ORD's own, initial oversight of PIA compliance is incomplete, since ORD only receives a "representative sample[]" of responsive records from the governmental body for its review. Tex. Gov't Code § 552.301(e)(1)(D). And the universe of records that this sample has been chosen from has already been significantly narrowed by decisions made by the governmental body—decisions including where to search, what search terms to include, potential custodians, and what records are not related to official business and thus not public information. *See infra* Section II.b.ii. If governmental bodies could withhold records subject to ORD opinions without any judicial oversight, then these decisions would not be subject to review and the public would lose "control over the instruments they have created," relying on the governmental body alone to police its compliance with transparency obligations. Tex. Gov't Code § 552.001(a); *see also B.W.B. v. Eanes Indep. Sch. Dist*., No. 03-16-00710-CV, 2018 WL 454783, at *4-5 (Tex. App. –Austin Jan. 10, 2018, no pet.); *Harris Cnty. Appraisal Dist. v. Integrity Title Co., LLC*, 483 S.W.3d 62, 68 (Tex. App.—Houston [1st Dist.] 2015, pet.

denied) ("[T]he Attorney General's ruling" should not be "unreviewable.") (internal quotations omitted).

Moreover, the PIA *explicitly contemplates* this exact scenario—that a writ of mandamus may be issued against a governmental body for refusal to provide public information even when the governmental body is following an ORD opinion concluding that certain information can be withheld as subject to PIA exceptions. Tex. Gov't Code § 552.323(a)(3) ("[T]he court may not assess . . . costs and fees . . . if the court finds that the governmental body acted in reasonable reliance on . . . a written decision of the attorney general.").

In other words, the PIA contemplates the exact scenario the parties here find themselves in: a governmental body relies on ORD advice to refuse to provide public records, the refusal is challenged in court, the court determines the refusal is unjustified, and the court issues mandamus requiring release of the records. The PIA then simply protects the governmental body from an assessment of costs and fees, with respect to the specific records ORD determined could be withheld or those sufficiently similar to the sample. If a court could never review governmental bodies' decisions to withhold public information on advice of the ORD, then Section 552.323(a)(3)'s safe harbor against costs and fees would be meaningless. *See Hunter*, 620 S.W.2d at 551 ("the legislature is never presumed to do a useless act").

Contrary to Petitioners' dramatic telling of this case, Respondent does not allege that Petitioners are "secretly" withholding information. Pet. Br. at 29. All parties acknowledge that some information is being withheld pursuant to a process laid out by

the PIA allowing the ORD to make a recommendation regarding the application of specific PIA exceptions to a subset of the records being withheld. But the PIA does not deprive the judicial branch of its oversight obligation simply because ORD renders its opinion. To limit Tex. Gov't Code § 552.321(a) in this manner would contradict the Legislature's command that the PIA "shall be liberally construed to implement" the public's control over governmental entities and right to public records. *Id*. at § 552.001(a).

b. Petitioners' Evidence is Insufficient to Counter Respondent's Allegations of PIA Violations.

Despite both the trial court and Court of Appeals concluding that Respondent provided concrete allegations that Petitioners have not met their statutory obligations under the PIA, Petitioners trivialize or simply ignore the allegations of their potential noncompliance. In its original Petition for Mandamus, American Oversight plainly pleaded allegations of specific missing records, which Petitioners' inadequate and conclusory evidence fails to rebut. Indeed, the affidavit and declaration proffered by the government's own PICs illustrate potentially serious problems with their processes for identifying and reviewing public information, and these potential process failures indicate that the records identified do not amount to complete responses to the PIA requests at issue, as required by law. *Am. Oversight*, 683 S.W.3d at 887 (potential issues include "records that should have been produced but have not been, . . . gaps in [Petitioners'] process for searching for and identifying public information subject to the PIA, and . . . that the PIA exceptions have been misapplied.").

i. Respondent Provided Concrete Allegations of Missing Records, Not Just Mere Speculation.

Far from being "ungrounded speculation" that Petitioners are withholding public information, Pet. Br. at 24, Respondent provided concrete reasons to doubt that the Governor and Attorney General met their statutory obligations by identifying specific records that should exist but have not been produced by Petitioners. These specific records are:

- *The January 6th Communications Request, the Paxton Non-Governmental Accounts Request, and the Paxton Texts Request*. Each request seeks records from time periods including January 6, 2021, during which Attorney General Paxton traveled to Washington, D.C., to speak at the "Stop the Steal" rally in his capacity as Texas Attorney General.[16] Attorney General Paxton attended in his official capacity. He was introduced as "General Paxton" and spoke at length about his office's litigation efforts in the 2020 election. Records created in connection with this official appearance, Tex. Gov't Code § 552.002(a)(3), (a-2) (defining "public information" as information created "in connection with the transaction of official business"), for instance, regarding that travel or communications sent or received about the event, are public records. Yet, incredibly, no such records were produced to American Oversight. In other words, the Attorney General's position is that despite the Attorney General

[16] C-SPAN, Campaign 2020: Rally on Electoral College Vote Certification, Jan. 6, 2021, https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification.

engaging in official travel to deliver a speech in his official capacity, his office created no records whatsoever before, during, or after that travel that in any way pertained to it. This is not credible.

- *The Abbott Gun Groups Request*. This request seeks public records from around the time of the mass shooting in Uvalde, including communications with the National Rifle Association during a time period when Governor Abbott gave a pre-recorded address to their convention, CR:725-26, but Petitioners produced no responsive records. Petitioners have attempted to minimize Respondent's allegations concerning this questionable result, suggesting (but not claiming explicitly) that all relevant communications could have been conducted "in person or over the telephone." Pet. App. Br. at 26. It is both insufficient for Petitioners to bear their burden with mere speculation and not credible to suggest that the Governor's video message could only have been transmitted in person or over the telephone.
- *The Paxton Texts Request*. In response to this request for eighteen months' worth of messages, Petitioners produced only two nonexcepted, responsive records, one of which apparently was not even produced by the Attorney General himself in response to the request, but rather seems to have originated in the office of the Utah Attorney General.[17] CR:850-57. This paltry response calls into question

[17] The record is a screenshot of a text message conversation among three individuals: an unidentified sender, "AG Ken Paxton," and "Sean Reyes" (presumably Utah Attorney General Sean Reyes). The sender can likely be identified as the source of the

either Petitioners' search process, their determination as to whether or not records identified in the process were public information, or both.

These allegations of missing documents, which clearly should exist and would be responsive to the requests, are more than "mere speculation," as Petitioners would have the Court believe. Pet. Br. at 31. And Petitioners' own speculation as to why these records might not exist does not hold up to scrutiny—nor does it meet their burden to provide affirmative *evidence* rebutting Respondent's allegations. Petitioners point to "document-retention policies that *may* permit disposal of emails or text messages," Pet. Br. at 3, n.2 (emphasis added), in an effort to insinuate that any responsive records were deleted in the regular course of business. Yet Petitioners' publicly-available document retention schedules do not support this assertion. Petitioners must retain many categories of information for three or more years, if not permanently, and Petitioners have not provided evidence that the records at issue in this case fall outside of those categories.[18] The earliest records sought by American Oversights' seven requests are

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screenshot, because the screenshot reflects the view one would typically see from the sender's own phone (*i.e.*, the phone owner's message appears on the right-hand side of the message thread and others' responses are on the left). CR:852-53. The message reflects the sender providing information to Paxton regarding a schedule of events in Utah. *Id*. The fact that the sender is providing logistical information about the Utah event, combined with the Attorney General's description of the sender as "someone in Attorney General Reye's [sic] office", CR:692, suggests that the record likely originated outside of Paxton's office. This in turn suggests that Paxton did not search for or produce a copy of the message from his own device, calling into question whether he searched for or produced other responsive materials.

[18] State of Texas Records Retention Schedule: Office of the Attorney General (June 22, 2020), https://www.tsl.texas.gov/sites/default/files/public/tslac/slrm/state/schedules/302.PDF

from April 1, 2020—less than three years from the time this suit was filed in late June 2022. CR:731-34, 830-33. Some requests were even more recent, seeking records from no more than five weeks prior—the Abbott and Paxton Gun Groups requests, for example, sought records from May 24th through June 3rd, 2022, and were submitted on June 6th and 7th, 2022, respectively. CR:717-18, 722-23. Furthermore, each of American Oversight's requests stated that the governmental body should "take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request" and mentioned that the office should institute a litigation hold on those records as appropriate. CR:732, 761, 802, 810, 831, 846, 867. As Petitioners acknowledge, Pet. Br. at 3, n.2, a litigation hold implemented on the date the requests were received should have stopped potentially responsive records from being deleted. Petitioners ignore these clear examples of withheld records altogether, saying Respondent's argument rests merely on "skepticism unaccompanied by facts," Pet. Br. at 25, because they have no explanation for why these records are being withheld from the public.

ii. Petitioners' Evidence Fails to Negate American Oversight's Jurisdictional Allegations.

The evidence provided by Petitioners to counter Respondent's allegations of their PIA violations is not only woefully insufficient, *Am. Oversight*, 683 S.W.3d at 886-887, but in fact demonstrates that points in their response process are ripe for error.

; State of Texas Records Retention Schedule: Office of the Governor (July 27, 2022), https://www.tsl.texas.gov/sites/default/files/public/tslac/slrm/state/schedules/301.pdf.

The PIA requires that record productions be "complete." Tex. Gov't Code § 552.001(a). But there are many steps along the way in responding to a PIA request where a governmental body may make decisions that render a production willfully incomplete, including how it conducts a search, how it categorizes records, and whether it claims exceptions over any of the resulting records. Petitioners provided an affidavit and declaration from their respective PICs, both of which were vague and evidenced holes in the governmental bodies' processes for responding to PIA requests. Yet Petitioners illogically argue that a court cannot review the process by which a governmental agency compiles and reviews the records it will eventually produce to (or withhold from) a requestor, Pet. Br. at 25-27, despite real questions of material fact regarding potential errors.

1. Petitioners' Searches for Responsive Records May Have Been Inadequate.

First, Petitioners' evidence does not show that they conducted diligent searches for the requested information. A refusal to provide public information may occur if the governmental body is unwilling to undertake a thorough search to ensure it finds the complete universe of responsive records. Indeed, failure to conduct an adequate search constitutes refusal to supply public information. *Cf. Rodriguez v. Dep't of Def.*, 236 F. Supp. 3d 26, 34 (D.D.C. 2017) ("It is axiomatic that an inadequate search for records constitutes an improper withholding[.]") (internal quotations omitted).[19] In this case, Petitioners' evidence shows obvious gaps where conscientious searchers would have followed up on indications of incompleteness, and is otherwise too conclusory to demonstrate that their searches were crafted to identify complete information.

According to their affidavit and declaration, both the Governor's and Attorney General's PICs merely forwarded requests to public information liaisons or the custodians themselves, without undertaking searches of their own. *See generally* CR:887-89; 954-58. Furthermore, neither affiant indicated that they provided any guidance regarding the searches for responsive information when they sent the requests to other personnel. Nor did either PIC provide any oversight over the process of gathering the information or make any effort to check that the potentially responsive

[19] The federal FOIA is the model for the Texas PIA, *City of Garland v. Dall. Morning News*, 22 S.W.3d 351, 355 (Tex. 2000), and cases interpreting the FOIA are therefore instructive.

records they received were complete—for example, by ensuring that all personal devices, email accounts, and messaging services were covered by the searches.

According to their affidavit and declaration, the PICs merely accepted the records provided to them and reviewed them for responsiveness. *Id.* When some custodians provided no potentially responsive records, the PICs apparently accepted their responses without any follow-up to the custodians or liaisons, even when there were clear reasons to doubt the results, such as the missing records described above in Section II.b.i. *Id.* Yet despite these indications of potentially missing records, obviously warranting a follow-up inquiry,[20] the PICs' statements show no evidence of any such inquiries or supplemental searches.

Attempting to undermine Respondent's allegations concerning flaws in their search, Petitioners mischaracterize *City of El Paso* as holding that a governmental body is not refusing to supply public information if it "had searched for requested documents and produced them." Pet. Br. at 8. But the affidavit and declaration provided by Petitioners here are nowhere near as "detail[ed]" as the affidavits provided in *City of El Paso*, 444 S.W.3d at 322-23, which were uncontroverted by the Plaintiff and offered "conclusive evidence that it searched extensively for the requested documents." *Id.* at

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[20] The fact in particular that the PIC received a record apparently not originating from Paxton or anyone in his office should have signaled that Paxton may not have produced all of his records to the Attorney General's PIC. At a minimum, if Paxton had searched and provided records from his own phone, he should have recovered his own copy of the text message appearing at CR:852-53. *See supra* note 17. His failure to do so raises serious questions as to his search process overall.

324-26 (City's evidence demonstrated steps including a central search on the City's server, multiple "official[] request[s for] responsive documents from the targeted and relevant individuals," and "produc[tion] to [the requestor of] every responsive document" it could access). Here, Petitioners' affidavit and declaration do not include follow-up requests, searches for responsive documents, or any other effort comparable to the *City of El Paso* affidavits. It is not "impugn[ing]" Petitioners' evidence, Pet. Br. at 27, to identify concerns with the completeness of the searches—concerns shared by both the trial and appellate courts. *See Am. Oversight*, 683 S.W.3d at 887.

2. Petitioners' Determinations as to Whether Records Are "Public Information" Were Unexplained.

Second, Petitioners' affidavit and declaration do not elucidate the process by which potentially responsive records are determined to be "public information" subject to the PIA. As the trial court appropriately recognized, "one core of the dispute may be how [Petitioners] were classifying 'official business' related to very visible issues under their oversight." CR:1088. A record is public information if it "is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business," which may be performed by a governmental body, for a governmental body, or "by an individual officer or employee of a governmental body in the officer's or employee's official capacity [if] the information pertains to official business of the governmental body." Tex. Gov't Code § 552.002(a). Records responsive to American Oversight's requests, which ask for emails sent from non-governmental accounts, and texts or similar messages, may

require a careful analysis of whether or not the message was made in the transaction of official business or in the custodian's official capacity. *See* Tex. Gov't Code § § 552.002(a)(3), (a-2) (defining "public information" as information created "in connection with the transaction of official business").

But Petitioners' evidence provide no information on the process for making this determination, including who has authorization or training to do so. It is unclear from the declarations whether the custodians themselves had authorization to determine what constitutes public information, or if that decision is left to the PICs. Certainly neither affidavit or declaration describes any process by which the PICs provided guidance to custodians or engaged in a determination themselves. Petitioners provided no information at all to rebut Respondent's claims that records responsive to its requests have been incorrectly categorized as not public information.

3. Petitioners' Application of PIA Exceptions May Be Overly Broad.

Third, American Oversight has alleged facts calling Petitioners' PIA exception determinations into question, and Petitioners' affidavit and declaration do not resolve these issues. As previously discussed, an exception claim endorsed by the ORD is reviewable by the trial court. *See supra* Section II.a. If a governmental body erroneously determines that a PIA exception applies, that refusal to supply public information is subject to judicial review.

According to their affidavit and declaration, PICs review potentially responsive records to ascertain whether any exceptions might apply, then submit an Open Records

Letter Ruling request to the ORD for its determination about a representative sample of records. CR:887-89; 954-58; *see also* Tex. Gov't Code §§ 552.301(e)(1)(A)–(D). The very structure of the process contemplates that public employees might sometimes misapply PIA exceptions: ORD reviews the PICs' application of the Act to the PICs' self-selected subset of records. In turn, a court may review ORD's opinions. *See Kallinen*, 462 S.W.3d at 28. This availability of judicial review is critical because ORD does not typically review every record subject to a claim of exception.

Here, as Respondent explained in its Petition for Mandamus, it defies belief that virtually every responsive record, some for requests covering a time period of years, is subject to the exceptions applied by the Governor and Attorney General. Petitioners' affidavit and declaration do not rebut this inference, nor does the fact that the ORD agreed with Petitioners' determinations regarding a mere subset of the records. CR:725-27. An overbroad claim of an exception, even if the ORD agrees with the claim, still constitutes a refusal by Petitioners to provide public information to a requestor. *See Muir*, 2023 WL 4110843, at *3. Here, American Oversight has plausibly alleged that Petitioners have taken an overbroad view as to PIA exceptions, and Petitioners' evidence fails to rebut these allegations.

c. This Case is Unexceptional.

This case would by no means transform the plea to the jurisdiction into a "useless tool," Pet. Br. at 31, because judicial review of potential PIA violations is already available to requestors who can provide clear allegations of incomplete information that the governmental bodies have the opportunity to rebut. This is a straightforward

PIA case, in which the governmental bodies were unable to carry their "burden to meet the summary judgment proof standard for [their] assertion that the trial court lacks jurisdiction" in response to a PIA requestor's allegations of violations of the act, and even if they did, the requestor showed "that a disputed material fact exists regarding the jurisdictional issue." *Garcia*, 372 S.W.3d at 635. Just because the Governor and Attorney General cannot meet their burden does not mean that the pleading standards need changing. *See* Pet. Br. at 27. Nor is the potential relief that the trial court may grant, if it finds that the Governor and Attorney General violated the PIA through inadequate searches or other wrongdoing, different from a "typical" public information suit. Pet. Br. at 30. If a court determines that a failure to supply complete public information stems from inadequate searches, it may order the governmental body to rerun its search to remedy the error, as is common in FOIA litigation.[21] The trial court is well-equipped to handle the straightforward issues in this case.

CONCLUSION

This case does not merit this Court's review. Contrary to Petitioners' apocalyptic language that this "dispute has the potential to affect every PIA request in the State,"

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[21] As noted above, the federal FOIA is the model for the Texas PIA, *City of Garland*, 22 S.W.3d at 355, and cases interpreting the FOIA are therefore instructive. *See*, *e.g.*, *NAACP Legal Def. & Educ. Fund, Inc. v. Dep't of Just.*, 463 F. Supp. 3d 474, 490 (S.D.N.Y. 2020) (ordering agency "to conduct an adequate search to identify documents responsive to each subpart of . . . [the] request."); *Rodriguez*, 236 F. Supp. 3d at 41(ordering agency "to conduct a new search for responsive documents that is adequate in scope, manner, and location, and to produce any additional responsive records to [requestor].").

Pet. Br. at 30, this case is no different from any other mandamus action filed under Tex. Gov't Code § 552.321. A requestor, as it is statutorily entitled to do, sought information from governmental bodies. *Id*. at § 552.001 *et seq*. The requestor determined that the records produced were incomplete and filed a mandamus action against those governmental bodies. As both the trial and appellate courts determined, American Oversight's Petition for Mandamus met the threshold for pleading facts establishing subject matter jurisdiction by alleging violations of the PIA and raising questions of material fact as to Petitioners' conduct. *Am. Oversight*, 683 S.W.3d at 879, 887.

If anything in this case would place a new and significant burden on Texas public servants, it is Petitioners' argument that this Court should ignore Section 552.321(b) and return the "extra burden" of original jurisdiction over PIA mandamus actions against executive officers back to the Supreme Court of Texas. *Sharp*, 904 S.W.2d at 682 (Hecht, J., dissenting) ("This Court has plenty to do without taking upon itself the *sole* responsibility for reviewing every open records dispute involving six large state offices.") (emphasis in original). The government states that Texas governmental bodies received more than a million requests for information in 2023, Pet. Br. at 31, but this number only underscores the fact that while PIA *requests* are common, PIA *litigation* is not. Courts are not swamped with mandamus actions against governmental bodies, despite the public frequently availing themselves of their statutory right to "remain[] informed so that they may retain control over the instruments they have created." Tex. Gov't Code § 552.001(a). Many requestors are satisfied that they have

received complete information, and those that are not must plead allegations sufficient to establish jurisdiction. Nothing in this case disturbs this balanced system. The Court of Appeals saw through Petitioners' attempts to overcomplicate this straightforward PIA action, and its well-reasoned opinion need not be disturbed by this Court.

PRAYER

For the reasons stated above, the Court should deny Petitioners' Request for Review. Alternatively, the Court should reject it on the merits.

Dated: October 10, 2024 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify on behalf of Respondent American Oversight that this brief contains 13,815 words according to the word count feature of the Microsoft Word software used to prepare this brief, excluding portions of the brief exempt from the word count under Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ Catherine L. Robb

CERTIFICATE OF SERVICE

I certify that on October 10, 2024, a true and correct copy of the above and foregoing Respondent's Brief has been served to all attorneys of record registered to receive filings through the e-filing system to the counsel listed below.

/s/ Catherine L. Robb

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