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SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. ___

In the Supreme Court of Texas

KEN PAXTON, IN HIS OFFICIAL CAPACITY AS TEXAS ATTORNEY GENERAL; AND GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS TEXAS GOVERNOR,
Petitioners,

v.

AMERICAN OVERSIGHT,
Respondent.

On Petition for Review
from the Third Court of Appeals, Austin

PETITION FOR REVIEW

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STATEMENT OF THE CASE

Nature of the Case:	Respondent American Oversight sought issuance of a writ of mandamus to Governor Greg Abbott and Attorney General Ken Paxton, in their official capacities, to require them to release "public information" that Respondent alleges was withheld from their response to its Texas Public Information Act ("the Act") requests. CR.713. Petitioners filed pleas to the jurisdiction asserting sovereign immunity from suit. CR.347, 500.
Trial Court:	250th Judicial District Court, Travis County 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, the trial court had not erred in requiring in camera review before addressing jurisdiction, and Respondent's mandamus claim was not rendered moot (in whole or in part) by prior disclosures.[1] *Paxton v. Am. Oversight*, No. 03-23-00090-CV, 2024 WL 175967 (Tex. App.—Austin Jan. 17, 2024, pet. filed) (Theofanis, J., joined by Byrne, C.J., and Kelly, J.) ("*Paxton*").

[1] Petitioners do not waive their mootness argument, but do not present it in this petition for review.

Statement of Jurisdiction

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

Issues Presented

The Act generally requires a governmental body to release public information to a requestor. If the governmental body "refuses," Tex. Gov't Code § 552.321(a), to seek the Attorney General's ruling on whether responsive information should be disclosed; refuses to follow that ruling and release public information identified by the Attorney General; or refuses to release public information, the Legislature has permitted requestors to seek issuance of a writ of mandamus to the governmental body. That permission is, however, limited. Like any suit against a government entity, to survive a plea to the jurisdiction, the requestor must state a viable claim for relief within an applicable waiver of sovereign immunity.

The issues presented are:

1. Whether the trial court has jurisdiction to issue a writ of mandamus against Petitioners, who are two of the State's six executive officers under the Constitution.
2. Whether Respondent met its burden to show a facially valid claim that Petitioners "refuse[d]" to provide public information.

Introduction

The Texas Constitution and the Legislature limit courts' jurisdiction to issue writs of mandamus to executive officers. Respondent's petition exceeded those limits. And even if a district court *could* issue such an extraordinary writ, a requestor must (at minimum) show that the government body refused to provide information that actually exists. Instead of doing so, Respondent speculates that Petitioners *must* have withheld material that is subject to disclosure because it did not receive what it expected. If that were enough to bring a claim within the Act's narrow waiver of sovereign immunity, "any superficial reference to the Act in a pleading would be sufficient to establish the State's consent to be sued—and additionally, the trial court's jurisdiction over the claim—a result the Legislature did not intend." *Mission Consol. ISD v. Garcia*, 372 S.W.3d 629, 637 (Tex. 2012).

The Court should grant review to clarify that a requestor cannot haul Petitioners into district court for violations of the Act without a valid grant of jurisdiction over executive officers and the Governor, and a claim for relief based on facts rather than unsupported accusations.

Statement of Facts

The court of appeals correctly stated the nature of the case. *See supra* p. vii.

I. American Oversight's Public-Information Requests

This appeal arises from seven information requests Respondent submitted to the Office of the Governor (OOG) and Attorney General's Office (OAG) between March 2021 and June 2022. *See* CR.714-23.

A. From OOG, Respondent requested:

(1) on January 7, 2022, emails from the Governor's unofficial email address to his official email address, his Chief of Staff, or his Deputy Chief of Staff from April 1, 2020, *see* CR.731;

(2) on June 6, 2022, emails and text messages[2] between specified officials in OOG and identified "gun groups" between May 24 and June 3, 2022, *see* CR.800-01; and

(3) on February 8, 2022, text messages "pertaining to official business" sent or received by the Governor from January 1, 2021, *see* CR.760.[3]

In completing Respondent's first request, OOG found some responsive documents but concluded that they could not be disclosed. CR.755-56. OOG requested review of those documents and a decision from OAG's Open Records Division (ORD), which determined that all of the documents were privileged or related to pending litigation. CR.755-57. OOG found no responsive public documents for the second request. CR.955-58.

With regard to documents responsive to the third request, OOG again had privilege concerns. OOG requested that ORD review those documents and consult with the Texas Department of Public Safety (DPS), whose confidentiality concerns were implicated. *See* CR.791; Tex. Gov't Code § 552.304. Based on OOG's and DPS's

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[2] "Text messages" included "messages on messaging applications similar in form to text messages." CR.12.

[3] Some of the document requests at issue in this appeal sought information that was more than a year old at the time of the request. CR.714–23. Absent a contrary statute (or a litigation hold), government agencies are typically allowed to create document-retention polices that may permit disposal of emails or text messages in significantly less than that time. *See* Tex. Gov't Code § 552.0215.

information, ORD determined that some information was exempt from disclosure under sections 552.103 (pending litigation), 552.104 (competitive business advantage), 552.107 (attorney-client privilege), 552.111 (policymaking processes), or the Homeland Security Act. CR.791-98. But it concluded that other information should be disclosed. CR.793.

OOG followed ORD's directions and provided Respondent with 100 pages of messages that ORD found should be disclosed, CR.398-497, 791, several of which concerned arrangements for conversations over the phone. *See, e.g.*, CR.414, 425, 435, 488.

B. From OAG, Respondent sought:

> (1) on March 25, 2021, emails from the Attorney General or Solicitor General between January 6 and 8, 2021, *see* CR.719;
>
> (2) on August 6, 2021, emails from the Attorney General's unofficial email to his official email, his Chief of Staff, or Deputy Chief of Staff from April 1, 2020, *see* CR.731;
>
> (3) on May 2, 2022, text messages "pertaining to official business," CR.721, the Attorney General sent or received from November 3, 2020, *see* CR.721; and
>
> (4) on June 7, 2022, email and text communications between named OAG officials and "gun groups" between May 24 and June 3, 2022, *see* CR.722-23.

For the January 6th communications, CR.891, and unofficial email requests, CR.903, OAG released some records, CR.512-13, 817-20, 897, and confirmed with ORD that the others were privileged attorney-client communications, CR.900, 911. OAG released two records in response to Respondent's text messages request,

CR.512-13, 914, 921, and ORD approved withholding the other records as attorney-client privileged, CR.922. For the gun groups request, CR.722-23, there were no responsive documents, CR.930.

II. Trial-Court Proceedings

Unsatisfied with those results, Respondent petitioned for a writ of mandamus against the Governor and Attorney General in their official capacities pursuant to Government Code section 552.321 in district court. CR.713. Respondent alleged that Petitioners' responses were deficient, as it believed there were more responsive, non-confidential records in Petitioners' possession. CR.725. In addition, Respondent extrapolated that Petitioners' "reliance on [ORD's] rulings constitutes an improper withholding of responsive records" because there must be additional "'public information' under [s]ection 552.022(a)(3)" of the Act which "must be produced." CR.727.

Petitioners filed pleas to the jurisdiction, arguing that Respondent had not pleaded a viable claim that Petitioners had "refuse[d]" to provide public information. CR.358-62, 505-06. Because the documents they provided were all the *public* documents that could be released, Petitioners further explained that Respondent's claim was moot. CR. 362-64, 506-07.

Attached to the Governor's plea was the sworn and notarized affidavit of Kieran Hillis, OOG's Public Information Coordinator and Assistant General Counsel, in which he described the method he used to fulfill Respondent's request. CR.954-58. He explained that he "conducted and oversaw a diligent and good faith search for information responsive to this request and gather[ed] the information [OOG]

owned, controlled, or had a right of access to." CR.955. In accordance with OOG's standard procedures, he distributed the requests "to all public information liaisons in every division within the agency that may maintain responsive records," who coordinated with employees within those divisions to provide "potentially responsive documents." CR.955. Hillis also pulled responses from earlier similar requests before reviewing the returned records for responsiveness. CR.955. If he intended to withhold any documents, he first requested a ruling on them from ORD. CR.955-56. He then either released the documents or withheld the records consistent with ORD's letter ruling. CR.956.

The Attorney General included in his plea to the jurisdiction the sworn declaration of OAG's Public Information Coordinator, Lauren Downey, also provided under penalty of perjury, describing how OAG responded to Respondent's public-information requests. CR.887. Like Hillis, Downey testified that she "conducted a diligent and good faith search for responsive information in accordance with OAG's standard procedures for responding to PIA request[s]." CR.887. Downey's searches were also tailored to each specific request. CR.887. In response to the request for the "January 6th communications," for example, Downey contacted both the Attorney General and the Solicitor General personally, as well as "their executive assistants and staff members," to inform them of the information requests and coordinate compilation of potentially responsive documents. CR.887. After reviewing those documents for responsiveness, Downey sent those she believed were exempt from release or representative samples to ORD along with an explanation of why the documents should not be released, CR.888, and accepted ORD's rulings, CR.887-89.

The trial court denied both Petitioners' pleas to the jurisdiction. CR.1087. According to the trial court, "[t]he initial responses of Lauren Downey . . . may have identified [public] documents as 'non-responsive' and therefore excluded them entirely." CR.1088. In addition, the court asserted that Hillis's affidavit used the phrase "official communications," but "the requestor did not so limit [its] language." CR.1088. Ultimately, the trial court expressed "concern" that "the public information rulings were [not] correct" about what constituted "official business" and privileged attorney-client communications and that "on the current filings," it could not decide if "there remains a right of judicial review." CR.1088. The court denied the pleas to the jurisdiction "until [the] documents are provided for in camera inspection" to show Petitioners' rationale. CR.1088.

III. Court-of-Appeals Proceedings

Petitioners brought an interlocutory appeal in the court of appeals, *see* Tex. Civ. Prac. & Rem. Code § 51.014(a)(8), which affirmed the trial court's order, *Paxton*, 2024 WL 175967, at *1. That analysis proceeded in two relevant parts.

First, the court rejected Petitioners' argument that they could not be subject to an action under section 552.321 because Texas Government Code section 22.002(c) explicitly prohibits mandamus actions against executive officers in the district court, and article V, section 3 of the Constitution prohibits assigning this Court the ability to mandamus the Governor. *Id.* at *5-6. The court relied on the later-enacted 552.321(b), reasoned that this amendment reflected the Legislature's intent to allow district courts to issue writs of mandamus against Petitioners in spite of prior law. *Id.* at *6. In addition, the court reasoned that because article V, section 3 prohibited the

Legislature only from assigning mandamus actions against the Governor to *this* Court, the Legislature was perfectly free to assign them to the district court. *Id.* at *7.

Second, having held that it must accept Respondent's "unnegated factual allegations," *id.* at *9, the court held that Petitioners had "refuse[d]" to provide public information per section 552.321 because certain data was putatively missing from the production. For example, in response to OOG reporting (and ORD confirming) that responses to one request were exempted from release, Respondent argued that "it defies belief that every responsive record created for nearly two years was related to pending litigation and/or to facilitate the rendition of professional legal services." CR.725.

The court of appeals also held that "by seeking a decision from the ORD that they could decline to produce some of the requested information and then withholding the information based on the ORD's letter rulings, [Petitioners] are refusing to supply that portion of the public information." *Id.* In particular, relying on *Kallinen v. City of Houston*, the court of appeals faulted Petitioners for "withholding information based on exceptions that they could waive, such as the attorney-client privilege." *Id.* at *8 n.6 (discussing 462 S.W.3d 25, 28 (Tex. 2015) (per curiam)).

This petition follows.

Summary of the Argument

I. The trial court did not have the constitutional or statutory authority to issue a writ of mandamus against Petitioners. The Constitution and section 22.002(c) of

the Government Code deprive trial courts of jurisdiction over mandamus actions against the Governor and Attorney General.

II. Sovereign immunity likewise bars this suit. Petitioners submitted evidence that they conducted a thorough, good-faith search, accepted ORD's rulings, and withheld only exempt documents from disclosure. Respondent cannot second-guess that review through the extraordinary relief of mandamus by just speculating that some documents were *not* exempt. In addition, Section 552.321 waives sovereign immunity only if a governmental body *refuses* to comply with the Act, and there was no refusal here.

ARGUMENT

I. The Governor and Attorney General Are Not Proper Defendants Under Section 552.321.

"The jurisdiction of all Texas courts, including [the Supreme] Court, derives from the Texas Constitution and state statutes." *In re Allcat Claims Serv., L.P.*, 356 S.W.3d 455, 459 (Tex. 2011) (orig. proceeding). Article V, section 8 of the Constitution gives 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*." Tex. Const. art. V, § 8 (emphasis added). Here, the Legislature's "clear and unambiguous language," *Tex. Nat. Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 854 (Tex. 2002), in the Texas Government Code and the Constitution prevent the district court from granting such an extraordinary writ against Petitioners.

A. Jurisdiction to issue writs of mandamus typically lies in the trial court, unless either a statute or the Constitution dictates otherwise. Tex. Const. art. V, § 8. Section 552.321(b) reflects this default rule by providing that a writ of mandamus "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). But that rule does not apply "in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law," Tex. Const. art. V, § 8, such as those singling out Petitioners.

In *A & T Consultants, Inc. v. Sharp*. 904 S.W.2d 668, 672 (Tex. 1995) (orig. proceeding), this Court observed that, concerning section 552.321, "[t]he problem with [writ of mandamus] jurisdiction arises when the respondent is an executive officer named by the [C]onstitution." *Id.* In that situation, there is a conflict between section 552.321, section 22.002(c), and articles IV and V of the Constitution. In the Constitution, the Governor and Attorney General are among the six "Officers constituting the Executive Department" of the State. Tex. Const. art. IV, § 1; *see Sharp*, 904 S.W.2d at 672. And under section 22.002(c), "[*o*]*nly* the supreme court has the authority to issue a writ of mandamus or injunction, or any other mandatory or compulsory writ or process, against any of the officers of the executive departments of the government of this state." Tex. Gov't Code § 22.002(c) (emphasis added). That statutory prohibition, moreover, operates in light of an even more specific one: under section 22.002(a), "[t]he supreme court or a justice of the supreme court may issue . . . all writs of quo warranto and mandamus . . . against . . . any officer of state government *except* the [G]overnor, the court of criminal appeals, or a judge of the

court of criminal appeals." *Id.* § 22.002(a) (emphasis added). In addition, the Legislature's exceptions in 22.002 for the Governor were not accidents—the Constitution excludes from even the Supreme Court's "exercise [of] the judicial power of the state" "writs of quo warranto and mandamus . . . against the Governor of the State." Tex. Const. art. V, § 3(a).

In nevertheless allowing this suit to proceed, the court of appeals pointed to the fact that the Legislature amended section 552.321 in 1999 to include a new subsection, 552.321(b). *Paxton*, 2024 WL 175967, at *6. That subsection provides that "[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," and "[a] suit filed by the [A]ttorney [G]eneral under this section must be filed in a district court of Travis County." Tex. Gov't Code § 552.321(b). The court interpreted section 552.321(b) as a later-enacted provision meant "to expressly delegate jurisdiction to the district courts over mandamus actions for violations of the [Act]." *Paxton*, 2024 WL 175967, at *6. In the panel's view, this solved the executive-officer problem because a later enactment than section 22.002 directed that mandamus actions pursuant to section 552.321 be brought in district court, overcoming the Constitutional and statutory prohibitions. *See id.* But that conclusion does not follow.

B. The court of appeals misapplied the general/specific canon in holding that section 552.321(b) trumped section 22.002(a), (c), and article V, section 3(a) of the Constitution. *See id.* Although the court of appeals agreed with Petitioners' argument that "when a general provision conflicts with a special or local provision, the 'special or local provision prevails,'" it held that such a rule did not apply when "the

general provision is the later enactment and the manifest intent is that the general provision prevail." *Id.*

But the general/specific canon also applies when a "general authorization and a more limited, specific authorization exist side-by-side." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). In such a scenario, "[t]he terms of the specific authorization must be complied with." *Id.* That is because "the specific provision comes closer to addressing the very problem posed by the case at hand and is thus more deserving of credence." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 183 (2012). Even if another law *could* provide an exception to section 22.002(c) by virtue of it being the later-enacted statute, that exception should be "express," not implied. *Sharp*, 904 S.W.2d at 672.

Reading the plain text of section 552.321(b) illustrates that the Legislature did not specifically authorize an exception to the constitutional and statutory prohibitions on mandamus actions against Petitioners. Section 552.321(b) is a *venue* provision, not a jurisdictional one. *See Dallas Area Rapid Transit v. Johnson*, No. 05-00-00657-CV, 2001 WL 88195, at *4 (Tex. App.—Dallas Jan. 26, 2001, no pet.) (noting provision that allows an employee to sue "in a district court of the county in which the cause of action arises or in a district court of Travis County" is a venue provision.). As this Court held in *Wichita County v. Hart*, "the language of some laws unambiguously indicates that the Legislature intended them to be jurisdictional in nature." 917 S.W.2d 779, 781 (Tex. 1996) (rejecting an argument that a venue provision mandated exclusive jurisdiction in particular counties). As in *Hart*, section 552.321 does not mention jurisdiction, and while the language is mandatory, requiring suit in

the specific locations mentioned in section 552.321(b) is for the convenience of the parties—just like any venue provision. *Id.* at 783. There is certainly no indication that this venue provision was meant to replace important statutory and constitutional barriers to mandamus actions against Petitioners.

C. The court of appeals relied heavily on *Sharp* to support its conclusion that section 552.321(b) granted the district court jurisdiction, but that case is of no help. In *Sharp*, this Court held that only it has jurisdiction to issue a writ of mandamus under the Act against an executive officer (there, the Comptroller). 904 S.W.2d at 674. The Court stated that "[n]either the constitution nor any other statute" discusses "which courts have jurisdiction over mandamus proceedings initiated to enforce the Act." *Id.* at 672. *But*, the Court noted, the Constitution mandates an exception for the Governor, Tex. Const. art. V, § 3, and authorizes one for the State's remaining executive officers, *id.* § 8. *Sharp*, 904 S.W.2d at 672. Because "district courts generally have no jurisdiction over executive officer respondents," the *Sharp* majority explained, an action under 552.321 against those respondents "would require express statutory authorization by the legislature naming district courts as the proper fora." *Id.* (citing Tex. Gov't Code § 552.353(b)(3)).

Then-Justice Hecht argued that the result of the majority's reasoning was that "the Governor's refusal to disclose information is either beyond review altogether or is less significant and can be dawdled over." *Id.* at 682 (Hecht, J., dissenting). He asserted that "the Legislature clearly intended this scheme of review and even had a good reason for it," even as he suggested that "the Legislature ought to try something different." *Id.* Such concerns are, however, insufficient to justify rewriting the

text of section 552.321—let alone the text of the Constitution. *Ditech Servicing, LLC v. Perez*, 669 S.W.3d 188, 193 (Tex. 2023) ("We must rely on the words of the statute, rather than rewrite those words to achieve an unstated purpose.").

For its part, the *Sharp* majority "encourage[d] the [L]egislature to take another look" at the Act, because "[c]urrently, section 552.321 authorizes mandamus actions against a governmental body, although [the Act] imposes the duty of compliance upon the public records officer." *Sharp*, 904 S.W.2d at 681. The Court acknowledged that "[t]his discrepancy can be overlooked in most cases," *id.*, but not where the recipient of a public-information request is an executive officer.

The court of appeals held that the Legislature solved the "problem" in *Sharp*, 904 S.W.2d at 672, by amending section 552.321(b) five years later, *Paxton*, 2024 WL 175967, at *6. The court held that section 552.321(b)'s references to a "district court" indicated the Legislature meant to exempt section 552.321 from the constitutional and statutory prohibitions against such suits against executive officers. *Id.*

The court of appeals misread the amendment, and more importantly, read it out of context. Importantly, in *Sharp*, the Court provided examples of what express authorization to bring an action against an executive officer might look like. In particular, the Court cited Government Code section 552.353(b)(3), which describes "a petition for a declaratory judgment *against the [A]ttorney [G]eneral* in a Travis County district court." Tex. Gov't Code § 552.353(b)(3) (emphasis added); *see Sharp*, 904 S.W.2d at 672. Similarly, section 552.324 (cited in the preceding provision) limits the suits a governmental body can bring to one "filed in a Travis County district court *against the [A]ttorney [G]eneral* in accordance with Section 552.325." Tex.

Gov't Code § 552.324(a)(1) (emphasis added). In each, the Legislature explicitly indicated that the suit could be brought against an executive officer.

Section 552.321 does not explicitly address mandamus actions against executive officers such as the Attorney General or the Governor. Moreover, the "suit filed by a requestor under this section" is defined in subsection (a) as a "suit for a writ of mandamus compelling a *governmental body* to make information available for public inspection." *Id.* § 552.321(a) (emphasis added). Per the Act, a "governmental body" excludes officers. *Id.* § 552.003(1). True, the definition encompasses an "office that is within or is created by the executive or legislative branch of state government," *id.* § 522.003(1)(A)(i), but Respondent sued the Governor and Attorney General—*not* their offices, CR.713. The two cannot be conflated. *Cf. Patel v. Tex. Dep't Licensing & Regulation*, 469 S.W.3d 69, 76 (Tex. 2015).

Petitioners do not maintain that the Governor or Attorney General are entirely exempt from the requirements of the Act. Public officials are *always* subject to the requirements of the law—simply "because it is the law." *In re Stetson Renewables Holdings, LLC*, 658 S.W.3d 292, 297 (Tex. 2022). But not every legal violation requires the specific legal remedy sought by a plaintiff—especially "if a judicial remedy that seeks to vindicate" that violation "might itself compel violating some other statutory command." *Id.* at 296. The Legislature simply did not provide the "express statutory authorization" required by *Sharp* to "nam[e] district courts as the proper fora." 904 S.W.2d at 672.

This presents a question important to the jurisprudence of the State. This Court should grant review and reject the court of appeals' conclusion that the Legislature

responded to *Sharp*'s criticism by including executive officers and the Governor within the jurisdiction of district courts in section 552.321.

II. This Court Should Clarify the Pleading Requirements to Bring a Writ of Mandamus Under Section 552.321.

This Court should also grant the petition to clarify what facts must be alleged to allow a requestor to survive a jurisdictional challenge to its suit. The court of appeals erred in holding that Respondent could defeat a plea to the jurisdiction by relying on skepticism unaccompanied by facts. *Paxton*, 2024 WL 175967, at *9. That is, in the court of appeals' view, Respondent is entitled to overcome a governmental body's sovereign immunity on the bare assertion that a government body "must" have more public information than that produced. That rule would not only open the floodgates for litigation under the Act, but contradict the presumption of regularity applicable to government bodies.

A. Conclusory assertions that Petitioners *must* have refused to follow the Act are insufficient when a court's jurisdiction—and an executive officer's immunity—are at stake. *See State v. Lueck*, 290 S.W.3d 876, 884 (Tex. 2009). This Court has repeatedly held that "[t]o invoke a waiver of immunity," plaintiffs "must allege *facts* to support their claim." *Dohlen v. City of San Antonio*, 643 S.W.3d 387, 394 (Tex. 2022) (emphasis added). For good reason. "[I]f . . . plaintiffs were allowed to stand on talismanic allegations alone, the constraining power of pleas to the jurisdiction would practically be eliminated." *Mission Consol. ISD*, 372 S.W.3d at 638.

The Act is no different. *City of Dallas v. Dall. Morning News, LP*, 281 S.W.3d 708, 716 (Tex. App.—Dallas 2009, no pet.) (explaining that assumptions about the

existence of responsive, unproduced emails are "legally insufficient evidence" to bring a claim within the Act's waiver of sovereign immunity). If a requestor could simply accuse a governmental body of mistake or misconduct without evidence and defeat a plea to the jurisdiction, every requestor would be able to show jurisdiction in every case. In addition, this nullifies the "presum[ption] that public officials act in good faith and without" improper motive in performing their public functions. *Abbott v. Anti-Defamation League Austin, Sw., & Texoma Regions*, 610 S.W.3d 911, 923 (Tex. 2020) (per curiam).

B. This Court should also clarify what constitutes a "refusal to supply public information" under section 552.321. Mandamus relief is available only "if the governmental body . . . *refuses* to supply public information or information that the [A]ttorney [G]eneral has determined is public information." Tex. Gov't Code § 552.321(a) (emphasis added). The Act does not define "refuses," but rules of "statutory construction . . . require[] [courts] to apply the common meanings of a word used in a statute" unless it is clear the Legislature meant to apply a different meaning. *Harris Cnty. Appraisal Dist. v. TWC*, 519 S.W.3d 113, 121 (Tex. 2017); *see* Tex. Gov't Code § 311.011(a). The ordinary meaning of "refuse" is to "indicate unwillingness to do, accept, give, or allow," not just to "fail," "leave undone," or "omit to perform." *City of El Paso v. Abbott*, 444 S.W.3d 315, 324 (Tex. App.—Austin 2014, pet. denied).

Under the court of appeals' decision, however, "by seeking a decision from the ORD that they could decline to produce some of the requested information and then withholding some of the information based on the ORD's letter rulings," Petitioners

are "refusing to supply that portion of the public information," *Paxton*, 2024 WL 175967, at *8 (citing *Muir v. Univ. of Tex. at Austin*, No. 03-22-00196-CV, 2023 WL 4110843, at *4 (Tex. App.—Austin June 22, 2023, no pet.) (mem. op.), and *Kallinen*, 462 S.W.3d at 29), subjecting the governmental body to a petition for writ of mandamus, *id.*, or at minimum its documents to in camera inspection, Tex. Gov't Code § 552.3221. In fact, in the court of appeals' view, simply by "withholding information based on exceptions that they could waive, such as the attorney-client privilege," governmental bodies are refusing to supply information. *Paxton*, 2024 WL 175967, at *8 n.6. The text of the Act does not support such a burden.

This dispute has the potential to affect every request in the State. After all, the Act has over 70 enumerated mandatory and waivable exceptions, *see* Tex. Gov't Code §§ 552.101-552.163, some of which can be enforced through criminal penalties, *id.* § 552.352. This dispute may also affect thousands of requests every year *just as applied to one* agency. *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010). Extrapolated to all governmental entities subject to the Act, this disagreement among the lower courts more than merits this Court's review.

Prayer

The Court should grant the petition, reverse the court of appeals' order, and dismiss the case for lack of jurisdiction.

Respectfully submitted.

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Attorney General of Texas

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First Assistant Attorney General

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Certificate of Compliance

Microsoft Word reports that this document contains 4,473 words, excluding exempted text.

/s/ Kathryn M. Cherry
Kathryn M. Chery

No. ___

In the Supreme Court of Texas

KEN PAXTON, IN HIS OFFICIAL CAPACITY AS TEXAS ATTORNEY GENERAL; AND GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS TEXAS GOVERNOR,

Petitioners,

v.

AMERICAN OVERSIGHT,

Respondent.

On Petition for Review
from the Third Court of Appeals, Austin

PETITION FOR REVIEW APPENDIX

TAB A

261ST DISTRICT COURT

DANIELLA DESETA LYTTLE
Judge
(512) 854-9309

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Court Clerk
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Official Court Reporter
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January 31, 2023

Ms. Kimberly Gdula
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Catherine L. Robb
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Re: Cause No. D-1-GN-22-002976; *American Oversight v. Texas Governor Greg Abbott et al.*; in the 250th District Court of Travis County, Texas

Dear Counsel:

On January 17, 2023, the Court heard Texas Governor Greg Abbott's Amended Plea to the Jurisdiction and Attorney General Paxton's Plea to the Jurisdiction ("State Defendants") in the above-referenced cause, which it took under advisement. After considering both pleas, the relevant pleadings, argument of counsel, and the applicable law, the Court will find that both pleas should be denied on the current filings.

Plaintiff American Oversight filed this suit under the Public Information Act. *See* Tex. Gov't Code Ann. § 552.001 et seq. At its basic level, the State Defendants assert that they provided all responsive documents, so any remaining claims lack subject matter jurisdiction under sovereign immunity. Underpinning their argument is that the only documents subject to the PIA would be "information … maintained under a law or ordinance or in connection with the transaction of official business … by an individual officer or employee of a governmental body in the officer's

DISTRICT COURT OF TRAVIS COUNTY TEXAS

or employer's official capacity and the information pertains to official business of the governmental body." Tex. Gov't Code Ann. § 552.002(a)(3), (a-1), § 552.101. The initial responses of Lauren Downey, Public Information Coordinator for the Office of the Attorney General, may have identified these documents as "non-responsive" and therefore excluded them entirely. (*See* Lauren Downey Affidavit, Exhibit A). Similarly, Kieran Hillis, Public Information Coordinator for the Office of the Governor, stated that the request sought records from OOG reflecting "official communications," although the requester did not so limit their language. (See Kieran Hillis Affidavit, Exhibit A). Thus, one core of the dispute may be how the State Defendants were classifying "official business" related to very visible issues under their oversight. The other primary areas of concern involved documents that were purported to be privileged as attorney-client communications. *See* Tex. Gov't Code Ann. § 552.107(1).

These State Defendants have not provided documents either as representative samples or otherwise for the Court to determine if there remains a right of judicial review over these underlying questions. *See* Tex. Gov't Code Ann. § 552.3221 (In Camera Inspection of Information). Consequently, on the current filings this Court cannot determine if the public information rulings were correct in what would constitute official business of the State's highest executives (the Governor, the Attorney General or other senior officials) or be protected as attorney-client communications. On this basis, the pleas to the jurisdiction are denied until such documents are provided for in camera inspection that would show the rationale used by the underlying State Defendants to determine these controlling legal questions. The parties are directed to set any such amended filing on the Central Docket according to Travis County Local Rules.

Ms. Robb, please draft a proposed order and circulate it to opposing counsel for approval as to form. Once all counsel have signed as to form, please email a PDF of the order to my staff attorney at James.Parsons@traviscountytx.gov.

Sincerely,

Daniella DeSeta Lyttle
Judge, 261st District Court

cc: Ms. Velva L. Price, Travis County District Clerk

I, VELVA L. PRICE, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office
On 03/02/2023 09:23:29

VELVA L. PRICE
DISTRICT CLERK
By Deputy: SH

CAUSE NO. D-1-GN-22-002976

AMERICAN OVERSIGHT,	§	**IN THE DISTRICT COURT**
PLAINTIFF,	§	
V.	§	**261ST JUDICIAL DISTRICT**
TEXAS GOVERNOR GREG ABBOTT, in his official capacity, and TEXAS ATTORNEY GENERAL KEN PAXTON, in his official capacity	§	
DEFENDANTS.	§	**TRAVIS COUNTY, TEXAS**

ORDER DENYING DEFENDANTS' PLEAS TO THE JURISDICTION

On the 17th day of January, 2023, the Court heard Defendant Texas Governor Greg Abbott's Plea to the Jurisdiction and Defendant Texas Attorney General Ken Paxton's Plea to the Jurisdiction. Counsel for Plaintiff and Defendants appeared by Zoom.

After considering the Pleas (as amended on January 9, 2023), Plaintiff's Response to the Pleas, Defendants' Replies, arguments of counsel, and the entire record herein, the Court finds that Defendant Abbott's Plea to the Jurisdiction and Defendant Paxton's Plea to the Jurisdiction should be DENIED.

IT IS THEREFORE ORDERED that Defendant Abbott's Plea to the Jurisdiction is DENIED.

IT IS FURTHER ORDERED that Defendant Paxton's Plea to the Jurisdiction is DENIED.

SIGNED this 23rd day of February, 2023.

Daniella DeSeta Lyttle
JUDGE PRESIDING

DISTRICT COURT OF TRAVIS COUNTY TEXAS

AGREED:

/s/ Catherine L. Robb
Catherine L. Robb
Counsel for American Oversight

AGREED AS TO FORM:

/s/ Alyssa Bixby-Lawson
Alyssa Bixby-Lawson
Counsel for Texas Governor Greg Abbot

/s/ Kimberly Gdula
Kimberly Gdula
Counsel for Attorney General Ken Paxton

I, VELVA L. PRICE, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office
On 03/02/2023 09:23:29

VELVA L. PRICE
DISTRICT CLERK
By Deputy: SH

TAB B

2024 WL 175967
Only the Westlaw citation is currently available.

Court of Appeals of Texas, Austin.

Ken PAXTON in his Official Capacity as Texas Attorney General and
Greg Abbott in his Official Capacity as Texas Governor, Appellants
v.
AMERICAN OVERSIGHT, Appellee

NO. 03-23-00090-CV
|
Filed: January 17, 2024

Synopsis

Background: Requester brought action against the Governor and the Attorney General, seeking writ of mandamus to compel disclosure under the Public Information Act (PIA) of their official communications, both email and text messages, with external entities, including a national gun rights association, following a major mass shooting and Governor's cancellation of an in-person appearance at association's convention. The 250th District Court, Travis County, Daniella Deseta Lyttle, J., denied Governor and Attorney General's pleas to the jurisdiction. Governor and Attorney General filed interlocutory appeal.

Holdings: The Court of Appeals, Rosa Lopez Theofanis, J., held that:

trial court was not deprived of jurisdiction to issue writs of mandamus against Governor and Attorney General;

requester affirmatively pled and demonstrated valid waiver of sovereign immunity under the PIA;

trial court was allowed to conduct in camera review in deciding whether it had jurisdiction; and

requester's mandamus claims were not rendered moot.

Affirmed.

Procedural Posture(s): Interlocutory Appeal; Petition for Writ of Mandamus; Plea to the Jurisdiction.

FROM THE 250TH DISTRICT COURT OF TRAVIS COUNTY, NO. D-1-GN-22-002976, THE HONORABLE DANIELLA DESETA LYTTLE, JUDGE PRESIDING

Attorneys and Law Firms

Catherine Lewis Robb, Austin, Emma Lewis, Mehreen Rasheed, William Pillifant, for Appellee.

Alyssa Bixby-Lawson, Kathryn M. Cherry, for Appellants Greg Abbott in his Official Capacity as Texas Governor.

Kathryn M. Cherry, Kimberly Gdula, for Appellants Ken Paxton in his Official Capacity as Texas Attorney General.

Before Chief Justice Byrne, Justices Kelly and Theofanis

OPINION

Rosa Lopez Theofanis, Justice

***1** In this interlocutory appeal, Ken Paxton, in his official capacity as the Texas Attorney General, and Greg Abbott, in his official capacity as the Texas Governor, appeal from the trial court's order denying their pleas to the jurisdiction in a case brought under the Texas Public Information Act (PIA). *See* Tex. Civ. Prac. & Rem. Code § 51.014(a)(8); Tex. Gov't Code §§ 552.001–.353. For the following reasons, we affirm the trial court's order.

BACKGROUND

In 2022, American Oversight submitted three public-information requests to the Office of the Governor, requesting disclosure of (i) official communications with any non-governmental email address attributed to Governor Abbott from April 2020 to the date the search is conducted ("Abbott Non-Governmental Accounts Request"); (ii) text messages sent or received by Governor Abbott pertaining to official business from January 1, 2021, to the date the search is conducted ("Abbott Texts Request"); and (iii) email communications between the Office of the Governor and specified external entities, including the National Rifle Association, from May 24, 2022, through June 3, 2022 ("Abbott Gun Groups Request").

In 2021 and 2022, American Oversight submitted four public-information requests to the Office of the Attorney General (OAG), requesting disclosure of (i) email communications sent by Attorney General Paxton or the Solicitor General from January 6 to 8, 2021 ("January 6th Communications Request"); (ii) official communications with any non-governmental email address attributed to Attorney General Paxton from April 1, 2020, through the date the search is conducted ("Paxton Non-Governmental Accounts Request"); (iii) text messages sent or received by Attorney General Paxton pertaining to official business from November 3, 2020, through the date the search is conducted ("Paxton Texts Request"); and (iv) email communications between the OAG and specified external entities, including the National Rifle Association, from May 24, 2022, through June 3, 2022 ("Paxton Gun Groups Request").

The Office of the Governor and the OAG (collectively "Respondents") responded that they had reviewed their files and had no information responsive to the respective Gun Groups Requests. As to the other public-information requests, Respondents wished to withhold information from public disclosure and requested a decision from the OAG about whether the information was within one of the PIA's exceptions to disclosure. *See* Tex. Gov't Code § 552.301 (setting forth procedure for governmental body to request decision from attorney general when "it wishes to withhold from public disclosure"). The OAG's Open Records Division (ORD) issued letter rulings as follows:

- Abbott Non-Governmental Accounts Request: the ORD concluded that the Office of the Governor could withhold information as privileged attorney-client communications, as well as related to pending litigation. *See id.* §§ 552.103 (excepting from disclosure information relating to pending litigation), .107 (excepting from disclosure information subject to attorney-client privilege).

***2** • Abbott Texts Request: the ORD concluded that some information must be withheld based on the Homeland Security Act, *see id.* §§ 418.176–.177 (stating that certain information is confidential relating to act of terrorism or related criminal activity), and that the Office of the Governor could withhold the information marked as related to pending litigation, attorney-client communications, privileged deliberative material, and related to ongoing competitive situations, *see id.* §§ 552.103, .104 (excepting from disclosure information relating to competition or bidding), .107, .111 (excepting from

disclosure interagency or intra-agency memoranda that would not be available to party in litigation with agency). After the underlying suit was filed, the Office of the Governor produced redacted text messages in response to this request.

- January 6th Communications Request: the ORD concluded that the OAG could withhold responsive information as privileged attorney-client communications. *See id.* § 552.107. Prior to requesting a letter ruling, the OAG produced two responsive records.

- Paxton Non-Governmental Accounts Request: the ORD concluded that the OAG could withhold information as privileged attorney-client communications. *Id.*

- Paxton Texts Request: the ORD concluded that the OAG could withhold information as privileged attorney-client communications. *Id.* At the time the OAG requested a letter ruling, the OAG produced two responsive records.

In June 2022, American Oversight sued Respondents, seeking a writ of mandamus to compel the disclosure of the requested public information. *See id.* § 552.321 (authorizing suits for writ of mandamus to compel governmental body to make information available for public disclosure when governmental body refuses to supply public information). It contended that the requested records were public information and challenged Respondents' positions that they had produced all responsive information to the seven public-information requests. For example, as to the Abbott Gun Groups Request, American Oversight alleged in its amended petition:

> 62. The Abbott Gun Groups request seeks all electronic communications between Governor Abbott and senior officials, on the one hand, and select individuals and organizations that focus on firearms, on the other hand, for a period of time surrounding the mass shooting in Uvalde, Texas. During this time period, Governor Abbott cancelled an in-person appearance at the National Rifle Association's convention but gave a prerecorded address. *See* Andrew Zhang, *Greg Abbott, Dan Patrick Cancel In-Person NRA Convention Appearances In Wake of Uvalde Mass Shooting*, Tex. Trib., May 26, 2022, https://www.texastribune.org/2022/05/26/greg-abbott-nrauvalde. It is not credible that no senior official in the Governor's Office was communicating with external entities focused on gun advocacy during a period of time that included both a major mass shooting event and the National Rifle Association annual meeting in the state.

Similarly, American Oversight's allegations as to the Paxton Gun Groups Request included, "It is not credible that no senior official in the [OAG] was communicating with external entities focused on gun advocacy during a period of time that involved both a major mass shooting and the National Rifle Association annual meeting in the state." And as to the January 6th Communications Request, American Oversight alleged:

> 63. The January 6th Communications Request seeks all email communications sent by Attorney General Ken Paxton or Solicitor General Judd Stone during a three-day period of time during which the Attorney General appeared at a political rally in Washington, D.C. *See* Benjamin Wermund, *Ken Paxton at Trump's D.C. Rally: 'We will not quit fighting.'*, Houston Chron., Jan. 6, 2021, https://www.houstonchronicle.com/politics/texas/article/Paxton-Trump-DC-rally-election-2020-georgia-15850073.php. It is highly implausible that a mere two email chains from the Solicitor General were the only communications not made to "facilitate the rendition of professional legal services" on those days.

***3** American Oversight included similar allegations as to each request to support its position that Respondents had not complied with the PIA.

Respondents filed answers and pleas to the jurisdiction based on sovereign immunity and the mootness doctrine. Respondents contended that they had fully complied with the PIA by conducting a search for responsive documents in a diligent manner and

in accordance with applicable policies and procedures and releasing the information that the ORD had determined was required to be released. They supported their pleas to the jurisdiction with affidavits from their respective public-information officers and copies of American Oversight's requests for public information, their responses, and the ORD's letter rulings. The affidavits detailed steps taken to conduct a "diligent and good faith search" for responsive information.

American Oversight filed a response to the pleas to the jurisdiction with exhibits, including copies of information that had been provided in response to its requests. American Oversight also filed its amended petition that included additional allegations challenging the correctness of the ORD's letter rulings. American Oversight alleged that the ORD "improperly limited the scope of public information" in the letter rulings and that Respondents' "reliance on those rulings constitutes an improper withholding of responsive records."

Following a hearing, the trial court denied Respondents' pleas to the jurisdiction. This interlocutory appeal followed. *See* Tex. Civ. Prac. & Rem. Code § 51.014(a)(8).

ANALYSIS

In four issues, Respondents argue that the trial court does not have jurisdiction to issue a writ of mandamus against them, that American Oversight did not meet its burden to affirmatively demonstrate jurisdiction over Respondents, that the trial court erred by refusing to decide jurisdiction without in camera review of documents withheld by Respondents, and that some of American Oversight's claims are moot to the extent that it has already received the documents responsive to those requests.

Standards of Review

Subject-matter jurisdiction is essential to the authority of a court to decide a case. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554–55 (Tex. 2000). A plea to the jurisdiction is a dilatory plea that challenges the trial court's subject-matter jurisdiction without regard to whether the asserted claims have merit. *Harris County v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004); *Bland Indep. Sch. Dist.*, 34 S.W.3d at 554. Whether a trial court has subject-matter jurisdiction is a question of law, and we review a trial court's ruling on a plea to the jurisdiction de novo. *Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

Where, as here, a plea to the jurisdiction challenges the existence of jurisdictional facts, we consider evidence that the parties have submitted when necessary to resolve the jurisdictional issues raised. *See id.* at 227 (citing *Bland Indep. Sch. Dist.*, 34 S.W.3d at 555). In this context, a party may present evidence to negate the existence of a jurisdictional fact alleged in the pleadings, which we would otherwise presume to be true. *See id.* When, as here, the challenged jurisdictional facts implicate the merits and the plea to the jurisdiction includes evidence, the trial court reviews the relevant evidence to determine if a fact issue exists. *See id.* at 228; *see also University of Tex. v. Poindexter*, 306 S.W.3d 798, 806–07 (Tex. App.—Austin 2009, no pet.) (addressing applicable standards of review depending on whether determination of jurisdictional fact implicates merits). In this context, we take as true all evidence favorable to the nonmovant and indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Miranda*, 133 S.W.3d at 228. If the evidence creates a fact question regarding the jurisdictional issue, then the trial court cannot grant the plea to the jurisdiction, and the fact issue is resolved by the factfinder at trial. *Id.* at 227–28. If the relevant evidence is undisputed or fails to raise a fact question on the jurisdictional issue, the trial court rules on the plea to the jurisdiction as a matter of law. *Id.* at 228; *see also Heckman v. Williamson County*, 369 S.W.3d 137, 150 (Tex. 2012) (explaining that "we must grant the plea if the defendant presents undisputed evidence that negates the existence of the court's jurisdiction").

***4** Respondents' pleas to the jurisdiction primarily rely on the doctrine of sovereign immunity, which generally bars suits against the State and its agencies or subdivisions absent a clear and unambiguous waiver of immunity by the Legislature. *Nazari v. State*, 561 S.W.3d 495, 500 (Tex. 2018); *see* Tex. Gov't Code § 311.034 (codifying rule). Because immunity from suit implicates a court's subject-matter jurisdiction, it may be properly asserted in a plea to the jurisdiction. *Houston Belt & Terminal*

Ry. Co. v. City of Houston, 487 S.W.3d 154, 160 (Tex. 2016). When a government defendant challenges jurisdiction based on immunity, the plaintiff must affirmatively demonstrate the trial court's subject-matter jurisdiction by alleging a valid waiver of immunity. *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019).

Respondents' issues also require us to construe statutes, a question of law which we review de novo. *See Railroad Comm'n v. Texas Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 624 (Tex. 2011) (stating that "construction of a statute is a question of law we review de novo"). We begin with the text's "plain and common meaning." *El Paso Healthcare Sys., Ltd. v. Murphy*, 518 S.W.3d 412, 418 (Tex. 2017) (citing *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865–66 (Tex. 1999)); *see also Presidio Indep. Sch. Dist. v. Scott*, 309 S.W.3d 927, 930 (Tex. 2010) (explaining that courts construe statutory "text according to plain and common meaning unless a contrary intention is apparent from the context or unless such a construction leads to absurd results" (citing *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625–26 (Tex. 2008))). "In conducting this analysis, 'we look at the entire act, and not a single section in isolation.' " *Murphy*, 518 S.W.3d at 418. This "text-based approach to statutory construction requires us to study the language of the specific provision at issue, within the context of the statute as a whole, endeavoring to give effect to every word, clause, and sentence." *Id.* (quoting *Ritchie v. Rupe*, 443 S.W.3d 856, 867 (Tex. 2014)).

Public Information Act

Before addressing Respondents' issues, we also provide a brief overview of the PIA's purpose and relevant provisions.

"The Texas Legislature promulgated the PIA with the express purpose of providing the public 'complete information about the affairs of government and the official acts of public officials and employees.' " *Muir v. University of Tex. at Austin*, No. 03-22-00196-CV, 2023 WL 4110843, 2023 Tex. App. LEXIS 4407 (Tex. App.—Austin June 22, 2023, no pet.) (mem. op.) (quoting *Jackson v. State Off. of Admin. Hearings*, 351 S.W.3d 290, 293 (Tex. 2011) (quoting Tex. Gov't Code § 552.001(a))). "Under the PIA, upon receiving a request for public information, a governmental body must 'promptly' produce public information for inspection, duplication, or both." *Id.* at *3, 2023 Tex. App. LEXIS 4407, at *6 (quoting Tex. Gov't Code § 552.221(a)). "This means that a governmental body must produce public information 'as soon as possible under the circumstances,' 'within a reasonable time, without delay.' " *Id.*

The PIA defines "public information" broadly to include "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business ... by a governmental body" or "by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body." Tex. Gov't Code § 552.002(a). Section 552.002 further provides:

> (a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.
>
> ***5** (a-2) The definition of "public information" provided by Subsection (a) applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

See id. § 552.002(a-1)–(a-2). " 'Official Business' means any matter over which a governmental body has any authority, administrative duties, or advisory duties." *Id.* § 552.003(2-a). And the term "governmental body" is defined to include an "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." *Id.* § 552.003(1)(A)(i).

"The PIA excepts information from public disclosure, however, if it is 'considered to be confidential by law, either constitutional, statutory, or by judicial decision.' " *Muir*, 2023 WL 4110843, at *3, 2023 Tex. App. LEXIS 4407, at *6 (quoting Tex. Gov't

Code § 552.101). "In turn, the PIA sets forth numerous statutory exceptions to disclosure," *id.* (citing Tex. Gov't Code §§ 552.101–.162), "embrac[ing] the understanding that the public's right to know is tempered by the individual and other interests at stake in disclosing that information," *id.* at *3, 2023 Tex. App. LEXIS 4407, at *6–7 (citing *Texas Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P.*, 343 S.W.3d 112, 114 (Tex. 2011)). A governmental body wishing to withhold requested information under an exception generally must request a determination from the attorney general confirming that the exception applies. *See id.* at *——, 2023 Tex. App. LEXIS 4407, at *7 (citing Tex. Gov't Code § 552.301(a)).

Central to this appeal, Section 552.321 of the PIA "waives sovereign immunity for requestors seeking a writ of mandamus to compel a governmental body to make certain information available for public inspection under certain circumstances." *City of El Paso v. Abbott*, 444 S.W.3d 315, 322 (Tex. App.—Austin 2014, pet. denied); *see Muir*, 2023 WL 4110843, at *3, 2023 Tex. App. LEXIS 4407, at *5–7 (describing PIA's waiver of sovereign immunity). Subsection (a) of Section 552.321 provides:

> 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 request an attorney general's decision as provided by Subchapter G or refuses to supply public information or information that the attorney general has determined is public information that is not excepted from disclosure under Subchapter C.

Tex. Gov't Code § 552.321(a). "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." *Id.* § 552.321(b).

Does the trial court have jurisdiction to issue a writ of mandamus against Respondents?

In their first issue, Respondents argue that the trial court lacks jurisdiction to issue a writ of mandamus against them because (i) they are executive officers of the State; (ii) by statute, only the Texas Supreme Court has jurisdiction to issue a writ of mandamus against the Attorney General; and (iii) under the Texas Constitution, no court may issue a writ of mandamus against the Governor. [1] Respondents do not argue that they are exempt from complying with the PIA. The plain meaning of "governmental body" as defined in the PIA includes the Office of the Governor and the OAG. *See id.* § 552.003(1)(A)(i) (defining "governmental body" to include offices in executive branch); *cf. id.* § 552.003(1)(B)(i) (expressly excluding judiciary from definition of "governmental body" for purposes of PIA). Respondents argue that they are not subject to Section 552.321. *See id.* § 552.321.

1 Respondents did not raise this argument with the trial court, but we consider it because it impacts the trial court's subject-matter jurisdiction. *See Rusk State Hosp. v. Black*, 392 S.W.3d 88, 94–96 (Tex. 2012).

***6** Respondents characterize Subsection (b) of Section 552.321 as a "default rule" that is overcome by Section 22.002(c) of the Texas Government Code and Article V, Section 3(a) of the Texas Constitution and argue that only the Texas Supreme Court may issue a writ of mandamus against an officer of an executive department, except the Governor. *See* Tex. Const. art. V, § 3(a); Tex. Gov't Code § 22.002(c); *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 674 (Tex. 1995). Section 22.002(c) of the Texas Government Code provides:

> Only the supreme court has the authority to issue a writ of mandamus or injunction, or any other mandatory or compulsory writ or process, against any of the officers of the executive departments of the government of this state to order or compel the performance of a judicial, ministerial, or discretionary act or duty that, by state law, the officer or officers are authorized to perform.

Tex. Gov't Code § 22.002(c). Citing Section 22.002(c), the Texas Supreme Court in *Sharp* concluded that it alone had jurisdiction to compel an executive officer to perform his duties to disclose requested public information. 904 S.W.2d at 673–74. The court explained that it was "empowered to grant writs against executive officers because a mandamus proceeding against one of them ordinarily involves questions of general public import." *Id.* at 674. The court also determined that "[a]ny exception" to Section 22.002(c)'s rule that district courts generally do not have jurisdiction to issue writs of mandamus against executive officers "would require express statutory authorization by the legislature naming district courts as the proper fora." *Id.* at 672. As the dissent recognized, the case created a challenge in the context of the PIA because the Texas Supreme Court "has plenty to do without taking upon itself *sole* responsibility for reviewing every open records dispute involving six large state offices." *Id.* at 682 (Hecht, J., dissenting).

After the *Sharp* decision, the Legislature amended the PIA to expressly delegate jurisdiction to the district courts over mandamus actions for violations of the PIA. *See* Act of May 25, 1999, 76th Leg., R.S., ch. 1319, § 27, 1999 Tex. Gen. Laws 4500, 4511 (codified at Tex. Gov't Code § 552.321(b)). We presume that the Legislature was aware of the *Sharp* decision, and its dissent, when it modified the PIA. *See In re Allen*, 366 S.W.3d 696, 706 (Tex. 2012) (orig. proceeding) (presuming that "Legislature is aware of relevant case law when it enacts or modifies statutes" and explaining that " 'statute is presumed to have been enacted by the legislature with complete knowledge of the existing law and with reference to it.' " (quoting *Acker v. Texas Water Comm'n*, 790 S.W.2d 299, 301 (Tex. 1990))).

Further, when a general provision conflicts with a special or local provision, 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 amendment to the PIA is the later enactment. *See id.*; *In re Allcat Claims Serv., L.P.*, 356 S.W.3d 455, 471 (Tex. 2011) (orig. proceeding) (concluding that Tax Code provisions stating which courts are authorized to provide mandamus relief applies over Section 22.002(c)'s "general provisions and limitations"); *see also Sharp*, 904 S.W.2d at 687 (Hecht, J., dissenting) (recognizing position that PIA provides no relief against Office of Governor would be "incongruous with [the PIA's] scheme of judicial review"). Thus, we conclude that Section 22.002(c) does not deprive the trial court of jurisdiction over American Oversight's PIA claims. [2]

2 Based on the plain language of the statutes, we also observe that Section 22.002(c) is directed to acts or duties that an officer is authorized to perform under state law as compared with Section 552.321, which provides relief from a governmental body's failure to comply with the mandatory requirements in the PIA to supply public information when requested.

***7** As support for their position that district courts do not have jurisdiction to issue a writ of mandamus against the Attorney General and no court has jurisdiction to do so against the Governor, Respondents also rely on Article V, Section 3 of the Texas Constitution, which 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." Tex. Const art. V, § 3(a) (emphasis added). The plain language of this provision is permissive without mandating that the Legislature take any action. *See, e.g.*, Tex. Gov't Code § 311.016(a) (" 'May' creates discretionary authority or permission or a power."). It follows that this provision does not conflict with Subsection 552.321(b)'s express grant of jurisdiction to the district courts—not the Texas Supreme Court—to issue writs of mandamus for violations of the PIA against governmental bodies, which term is defined to include the OAG and the Office of the Governor. [3] *See id.* §§ 552.003(1)(A)(i), .321(b). The PIA's grant of jurisdiction to the district courts is also consistent with Article V, Section 8 of the Texas Constitution, which 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." Tex. Const. art. V, § 8.

3 Respondents do not appear to challenge the constitutionality of Section 552.321.

As support for their argument that no court has jurisdiction to issue a writ of mandamus directly against the Governor to enforce the PIA, Respondents cite an inapposite case from this Court. *See In re Luevano*, No. 03-21-00407-CV, 2021 WL

3816331, at *——, 2021 Tex. App. LEXIS 7154, at *1 (Tex. App.—Austin Aug. 27, 2021, orig. proceeding) (mem. op.). In that case, this Court dismissed an original proceeding seeking a writ of mandamus against the Governor because the petition was filed directly in this Court. *See id.* (citing Tex. Gov't Code § 22.221(b) (addressing writ power of courts of appeals)). We have no mandamus authority against the Governor, except to enforce our jurisdiction. *See* Tex. Gov't Code § 22.221(a). In contrast, the PIA expressly grants jurisdiction to district courts to issue writs of mandamus to compel a governmental body to make information available for public inspection if the governmental body refuses to supply the public information, and Respondents are officers of a "governmental body" for purposes of the PIA. *See id.* §§ 552.003(1)(A)(i), .321; *see, e.g., City of Dallas v. Abbott*, 304 S.W.3d 380, 382 n.2 (Tex. 2010) (observing that only Texas Supreme Court has authority to issue writs of mandamus against Attorney General "[a]bsent express statutory authority providing otherwise" (citing *Sharp*, 904 S.W.2d at 672 (citing Tex. Gov't Code § 22.002(c)))). Had the Legislature intended to carve out an exception for the Governor and Attorney General—as officers in the executive branch—from Section 552.321, it would presumably have expressly stated so. *See Scott*, 309 S.W.3d at 931 (declining to disregard "twenty-one uses of 'party' in surrounding contexts, all of which do not include the Commissioner, in favor of the single use that does" and explaining that to do so would be "precisely the sort of 'exaggerated, forced, or constrained meaning' that we eschew" when interpreting statutes). Instead, the disclosure requirements in the PIA apply uniformly to governmental bodies, which term expressly includes offices within the executive branch, and the district court's jurisdiction to compel those governmental bodies to comply is without exception. *See Murphy*, 518 S.W.3d at 418 (considering provision in context of entire statute).

For these reasons, we conclude that the trial court has jurisdiction to issue writs of mandamus against Respondents in their official capacities as officers of governmental bodies to compel them to produce public information under the PIA. We overrule their first issue. [4]

4 To the extent that Respondents argue that American Oversight's only option was to follow the procedure set forth in Section 552.3215 of the PIA, which provides for declaratory judgment or injunctive relief when a governmental body is violating the PIA, their argument is inconsistent with that section's express language. *See* Tex. Gov't Code § 552.3215. Under that section, a requestor generally must file a complaint with the district or county attorney, and the district or county attorney or the attorney general then may bring the action for declaratory judgment or injunctive relief. *Id.* § 552.3215(c), (e). But the plain language of Subsection 552.3215(k)—expressly stating that an "action authorized by this section is in addition to any other civil, administrative, or criminal action provided by this chapter or another law"—makes clear that this section is not the exclusive option available to a requestor. *Id.* § 552.3215(k).

Did American Oversight meet its burden to affirmatively demonstrate jurisdiction?

***8** In their second issue, Respondents argue that American Oversight did not affirmatively plead or demonstrate the trial court's jurisdiction over Respondents "when they offered evidence disproving the allegation that they refused to produce responsive public information." They rely on the evidence that they produced documents in compliance with the ORD's letter rulings. [5] They also argue that American Oversight's petition "speculates that there *should* be more information than it received but makes no concrete allegations about documents that it may reasonably believe have been erroneously or wrongfully withheld" and that American Oversight fails to allege a waiver of sovereign immunity because mandamus relief is only available if the governmental body refuses to supply public information, which requires a showing of "unwillingness" to supply the information.

5 To the extent that Respondents argue that American Oversight is seeking mandamus relief against the ORD and that its allegations do not support jurisdiction against the ORD, we do not read American Oversight's pleadings to be seeking a separate writ of mandamus against the ORD. We read American Oversight's position to be that it challenges Respondents' refusal to produce responsive documents to the extent that their refusal is based on the ORD's letter rulings.

Respondents rely on this Court's opinion in *City of El Paso v. Abbott.* In that PIA case, this Court reversed the trial court's denial of the City of El Paso's plea to the jurisdiction and rendered judgment that the trial court did not have jurisdiction. 444 S.W.3d at 317. The City's plea was supported with an affidavit that detailed its efforts to comply with the request for public information and asserted that "the City had gathered and turned over 'all responsive information accessible to the City or within the city's

control.' " *Id.* at 319. Relying on the meaning of "refuse"—"to 'show or express a positive unwillingness to do or comply with' "—this Court concluded that the City had conclusively established that it was not refusing to supply public information under Section 552.321(a). *Id.* at 324 (citing dictionary definitions of "refuse"). We explained:

> Here, the City's jurisdictional evidence conclusively established that it was willing to supply the requested information and, to the extent that it located it or received it from the individuals named in the request, it actually had done so. Accordingly, the City asserted and supported with evidence that the trial court lacked subject-matter jurisdiction.

Id. at 325 (citing *Miranda*, 133 S.W.3d at 228). We also observed that the requestor had not offered "any evidence, or even argument, to controvert or question the City's conclusive evidence that it searched extensively for the requested documents" and "turned over all those documents to [the requestor]." *Id.* at 325–26.

In contrast with the facts in that case, American Oversight challenges Respondents' evidence that their searches complied with the PIA and the correctness of the ORD's letter rulings concluding that Respondents could withhold information responsive to the requests. In this context, by seeking a decision from the ORD that they could decline to produce some of the requested information and then withholding some of the information based on the ORD's letter rulings, Respondents are "refusing to supply that portion of the public information." [6] *See Muir*, 2023 WL 4110843, at *——–——, 2023 Tex. App. LEXIS 4407, at *11–12 (citing *Kallinen v. City of Houston*, 462 S.W.3d 25, 29 (Tex. 2015) (per curiam)); *see also Kallinen*, 462 S.W.3d at 28 (rejecting interpretation of Section 552.321 that would equate "information that is public with information that has been determined by the Attorney General to be public"); *City of Dallas*, 304 S.W.3d at 384 (explaining that ORD's interpretation of PIA "may be persuasive" but that it "is not controlling" on court); *see, e.g.*, Tex. Gov't Code § 552.323(a)(3) (providing for recovery of attorney's fees against governmental body even when ORD's ruling concluded that information was not public). Thus, American Oversight's undisputed allegations "are sufficient to 'demonstrate a refusal by [Respondents] under PIA [Section 552.321(a)].' " *Muir*, 2023 WL 4110843, at *4, 2023 Tex. App. LEXIS 4407, at *12.

6 In its briefing to this Court, Respondents represent that they "have produced all responsive, non-privileged records that exist," confirming that they have not produced responsive documents that they have determined are privileged.
In *City of El Paso*, the City withheld certain personal email addresses from public disclosure based on a directive from an attorney general's opinion. *See City of El Paso v. Abbott*, 444 S.W.3d 315, 327 (Tex. App.—Austin 2014, pet. denied) (citing Tex. Gov't Code § 552.137(a)–(c)). The attorney general directed the City that the addresses must be withheld "unless the owners affirmatively consent to their release," and there was no evidence that the owners had consented. *Id.* In that context, we explained, "Given this directive, the City cannot be said to be 'refusing to supply public information that the attorney general has determined is public information.' " *Id.* In contrast, Respondents are withholding information based on exceptions that they could waive, such as the attorney-client privilege. *See, e.g.*, Tex. Gov't Code § 552.107 (excepting information from requirement that it be made available to public based on attorney-client privilege). But to the extent that our analysis in *City of El Paso* supports Respondents' position that a governmental entity is not refusing to supply information when it is following a letter ruling from the ORD, the Texas Supreme Court has since made clear that the trial courts have jurisdiction to review the correctness of the ORD's letter rulings. *See Kallinen v. City of Houston*, 462 S.W.3d 25, 28 (Tex. 2015) (per curiam) (explaining that requirement that governmental body seek ruling from Attorney General when withholding requested information "is check on the governmental body, not a remedy for the requestor to exhaust" and that "City's view of Section 552.321(a) would make the Attorney General's ruling unreviewable"); *see also Harris Cnty. Appraisal Dist. v. Integrity Title Co.*, 483 S.W.3d 62, 68 (Tex. App.—Houston [1st Dist.] 2015, pet. denied) (distinguishing *City of El Paso*; explaining that "underlying principle in *Kallinen* is that the trial court has jurisdiction under Section 552.321(a) to consider whether requested information is subject to disclosure, irrespective of whether the Attorney General has issued a ruling addressing that question"; and concluding that trial court had jurisdiction under

Section 552.321 to consider whether requested information, which was being withheld based on ORD's letter ruling, was public information subject to disclosure).

***9** Respondents argue that "*Muir* is distinguishable from this case" because the jurisdictional challenge in that case was limited to a challenge to the pleadings, "some information-withholding [was] inconsistent with guidance from ORD," Respondents' pleas are also based on jurisdictional evidence, and they sought and obtained letter rulings stating which documents were public information. *See id.* at *3–4 (stating that plea to jurisdiction was challenge to sufficiency of pleadings and that pleadings included that university delayed producing information). They argue that American Oversight has not presented evidence to contradict their evidence of compliance with the PIA, including the ORD's letter rulings supporting that the withheld information is privileged or subject to other exceptions. But the evidence is undisputed that Respondents continue to withhold documents responsive to American Oversight's requests, and American Oversight's factual allegations include challenges to the completeness of the information that was produced and the correctness of the ORD's letter rulings concerning the claimed exceptions that Respondents rely on to support their withholding of responsive documents. American Oversight challenges the adequacy of the searches and contends that the affidavits from the public-information coordinators were conclusory and support that the searches were incomplete with significant omissions, that records responsive to its requests were incorrectly categorized as not public information, and that it has identified issues of material fact concerning the claimed exceptions that would allow information to be withheld.

Viewing American Oversight's unnegated factual allegations in its pleadings and the jurisdictional evidence in the light most favorable to it, we conclude that Respondents' jurisdictional evidence has not negated American Oversight's allegations that Respondents have not complied with the PIA, including its allegations describing records that should have been produced but have not been, identifying gaps in Respondents' process for searching for and identifying public information subject to the PIA, and identifying facts that support that the PIA exceptions have been misapplied. *See* Tex. Gov't Code § 552.001(a) (requiring record production under PIA to be "complete"). For example, as to the Paxton January 6th Communications Request, the request sought email communications "(including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments)" during the time that Attorney General Paxton traveled to Washington, D.C., to speak at a political rally. American Oversight alleges that he was there in his official capacity but that no information regarding travel or communications was produced. *See id.* § 552.002(a)(3) (defining "public information" to include information "in connection with the transaction of official business ... by an individual officer" in his "official capacity"), (a-2) (defining "public information" to include "electronic communication").

As an example of an allegedly improper characterization of information, American Oversight alleges that Respondents improperly limited the definition of the Attorney General's official business as representing the state in civil litigation even though he has other duties. *See id.* § 552.002(a-1) (defining when information is in connection with transaction of official business). Another example involves American Oversight's allegations as to the Respondents' representation that they did not have any information responsive to the Gun Groups Requests. American Oversight's pleadings reference the mass shooting in Uvalde, Texas; Governor Abbott's cancellation of an in-person appearance at the National Rifle Association's convention; and his pre-recorded address at the convention that happened during the time of the requests to support their allegation that Respondents' responses to these requests were incomplete.

At this juncture, we must view American Oversight's unnegated jurisdictional allegations of fact as true and the jurisdictional evidence in the light most favorable to American Oversight. *See Miranda*, 133 S.W.3d at 226–28. Applying these standards, we conclude that American Oversight has affirmatively pleaded and demonstrated a valid waiver of immunity under the PIA. *See Muir*, 2023 WL 4110843, at *——, 2023 Tex. App. LEXIS 4407, at *12; *B.W.B. v. Eanes Indep. Sch. Dist.*, No. 03-16-00710-CV, 2018 WL 454783, 2018 Tex. App. LEXIS 223 (Tex. App.—Austin Jan. 10, 2018, no pet.) (mem. op.) (concluding that Texas Supreme Court had rejected jurisdictional argument that requestor cannot challenge adverse OAG decision and that Section 552.321 of PIA waives governmental immunity by allowing requestor to file suit for writ of mandamus to compel release of public information); *Harris Cnty. Appraisal Dist. v. Integrity Title Co.*, 483 S.W.3d 62, 67–69 (Tex. App.—Houston [1st Dist.] 2015, pet. denied) (rejecting governmental entity's argument that trial court lacked jurisdiction under Section 552.321 because Attorney General had determined that requested information was excepted from disclosure under PIA and "[f]ollowing

Kallinen" to conclude that trial court had jurisdiction under Section 552.321 to consider whether requested information was public information subject to disclosure). Thus, we overrule Respondents' second issue.

Did the trial court err concerning in camera review?

***10** In their third issue, Respondents argue that the trial court erred by refusing to decide jurisdiction without in camera review of documents withheld by Respondents. Specifically, Respondents argue that the trial court erred by ordering in camera review before establishing its jurisdiction and that it did not need in camera review to conclude that it lacked jurisdiction as a matter of law. *See* Tex. Gov't Code § 552.3221 (addressing trial court's in camera inspection of information and stating that information at issue "may be filed with the court for in camera inspection as is necessary for the adjudication of the case").

Although the trial court in its letter to the parties explaining its ruling on the pleas to the jurisdiction left open the possibility that Respondents could submit additional evidence for in camera review and then file amended pleas, the trial court's order denying the pleas did not require Respondents to submit documents for in camera review but denied Respondents' pleas, expressly stating: "After considering the Pleas (as amended [ ]), Plaintiff's Response to the Pleas, Defendants' Replies, arguments of counsel, and the entire record herein, the Court finds that Defendant Abbott's Plea to the Jurisdiction and Defendant Paxton's Plea to the Jurisdiction should be DENIED." Further, we have concluded that the trial court did not err in denying the pleas because American Oversight affirmatively pleaded and demonstrated the trial court's jurisdiction over its claims against Respondents. In this context, we overrule Respondents' third issue.

Are some of American Oversight's claims moot?

In their fourth issue, Respondents contend that American Oversight's claims concerning the Abbott Texts Request are moot because Governor Abbott produced the records that the ORD determined were public and subject to disclosure.

"The mootness doctrine—a constitutional limitation founded in the separation of powers between the governmental branches—prohibits courts from issuing advisory opinions." *Electric Reliability Council of Tex., Inc. v. Panda Power Generation Infrastructure Fund, LLC*, 619 S.W.3d 628, 634 (Tex. 2021) (citing *Patterson v. Planned Parenthood of Hous. & Se. Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998)). "A case becomes moot when (1) a justiciable controversy no longer exists between the parties, (2) the parties no longer have a legally cognizable interest in the case's outcome, (3) the court can no longer grant the requested relief or otherwise affect the parties' rights or interests, or (4) any decision would constitute an impermissible advisory opinion." *Id.* (citing *State ex rel. Best v. Harper*, 562 S.W.3d 1, 6 (Tex. 2018)).

"A claim for mandamus relief under Section 552.321 becomes moot when the governmental body releases the requested information that is the subject of the action." *Muir*, 2023 WL 4110843, at *6, 2023 Tex. App. LEXIS 4407, at *16 (citing *Gates v. Texas Dep't of Fam. & Protective Servs.*, No. 03-15-00631-CV, 2016 WL 3521888, at *—— – ——, 2016 Tex. App. LEXIS 6598, at *13-14 (Tex. App.—Austin June 23, 2016, pet. denied) (mem. op.)). Here, although the Office of the Governor produced some documents responsive to this request, American Oversight's claim for mandamus relief is based in part on the continued withholding of other documents responsive to the request. In this context, we conclude that the production of some responsive documents does not moot American Oversight's claims as to this request. *See id.* at *—— – ——, 2023 Tex. App. LEXIS 4407, at *16–17 (holding that live controversy remained and that case was not moot when governmental entity voluntarily produced some, but not all, requested records); *cf. Texas State Bd. of Veterinary Med. Exam'rs v. Giggleman*, 408 S.W.3d 696, 701 (Tex. App.—Austin 2013, no pet.) (concluding that case brought under PIA was moot when governmental body produced "*all* of the exhibits that had been the original focus of the parties' dispute") (emphasis added). We overrule Respondents' fourth issue.

CONCLUSION

***11** Having overruled Respondents' issues, we affirm the trial court's order.

All Citations

--- S.W.3d ----, 2024 WL 175967

End of Document

TAB C

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article IV. Executive Department

Vernon's Ann.Texas Const. Art. 4, § 1

§ 1. Officers constituting the Executive Department

Currentness

The Executive Department of the State shall consist of a Governor, who shall be the Chief Executive Officer of the State, a Lieutenant Governor, Secretary of State, Comptroller of Public Accounts, Commissioner of the General Land Office, and Attorney General.

Credits
Adopted Feb. 15, 1876. Amended Nov. 7, 1995.

Vernon's Ann. Texas Const. Art. 4, § 1, TX CONST Art. 4, § 1
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

End of Document

TAB D

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article V. Judicial Department

Vernon's Ann.Texas Const. Art. 5, § 3

§ 3. Jurisdiction of Supreme Court

Effective: November 26, 2001
Currentness

(a) The Supreme Court shall exercise the judicial power of the state except as otherwise provided in this Constitution. Its jurisdiction shall be coextensive with the limits of the State and its determinations shall be final except in criminal law matters. Its appellate jurisdiction shall be final and shall extend to all cases except in criminal law matters and as otherwise provided in this Constitution or by law. The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law, and under such regulations as may be prescribed by law, the said courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs, as may be necessary to enforce its jurisdiction. The Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State.

(b) The Supreme Court shall also have power, upon affidavit or otherwise as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction.

Credits
Adopted Feb. 15, 1876. Amended Aug. 11, 1891; Nov. 4, 1930; Nov. 4, 1980, eff. Sept. 1, 1981; Nov. 6, 2001, eff. Nov. 26, 2001.

Vernon's Ann. Texas Const. Art. 5, § 3, TX CONST Art. 5, § 3
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

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TAB E

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article V. Judicial Department

Vernon's Ann.Texas Const. Art. 5, § 8

§ 8. Jurisdiction of District Courts

Currentness

District Court jurisdiction consists of 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. District Court judges shall have the power to issue writs necessary to enforce their jurisdiction.

The District Court shall have appellate jurisdiction and general supervisory control over the County Commissioners Court, with such exceptions and under such regulations as may be prescribed by law.

Credits
Adopted Feb. 15, 1876. Amended Aug. 11, 1891; proclamation Sept. 22, 1891; Nov. 6, 1973; Nov. 5, 1985.

O'CONNOR'S CROSS REFERENCES
See also ***O'Connor's Texas Rules***, "District courts," ch. 2-G, §3.

Vernon's Ann. Texas Const. Art. 5, § 8, TX CONST Art. 5, § 8
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

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TAB F

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 2. Judicial Branch (Refs & Annos)
Subtitle A. Courts
Chapter 22. Appellate Courts
Subchapter A. Supreme Court

V.T.C.A., Government Code § 22.002

§ 22.002. Writ Power

Currentness

(a) The supreme court or a justice of the supreme court may issue writs of procedendo and certiorari and all writs of quo warranto and mandamus agreeable to the principles of law regulating those writs, against a statutory county court judge, a statutory probate court judge, a district judge, a court of appeals or a justice of a court of appeals, or any officer of state government except the governor, the court of criminal appeals, or a judge of the court of criminal appeals.

(b) The supreme court or, in vacation, a justice of the supreme court may issue a writ of mandamus to compel a statutory county court judge, a statutory probate court judge, or a district judge to proceed to trial and judgment in a case.

(c) Only the supreme court has the authority to issue a writ of mandamus or injunction, or any other mandatory or compulsory writ or process, against any of the officers of the executive departments of the government of this state to order or compel the performance of a judicial, ministerial, or discretionary act or duty that, by state law, the officer or officers are authorized to perform.

(d) Repealed by Acts 1987, 70th Leg., ch. 148, § 2.03.

(e) The supreme court or a justice of the supreme court, either in termtime or vacation, may issue a writ of habeas corpus when a person is restrained in his liberty by virtue of an order, process, or commitment issued by a court or judge on account of the violation of an order, judgment, or decree previously made, rendered, or entered by the court or judge in a civil case. Pending the hearing of an application for a writ of habeas corpus, the supreme court or a justice of the supreme court may admit to bail a person to whom the writ of habeas corpus may be so granted.

Credits

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 148, § 2.03, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 355, § 1, eff. Sept. 1, 1995; Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 2.01, eff. Jan. 1, 2012.

V. T. C. A., Government Code § 22.002, TX GOVT § 22.002
Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

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TAB G

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 5. Open Government; Ethics (Refs & Annos)
Subtitle A. Open Government
Chapter 552. Public Information (Refs & Annos)
Subchapter H. Civil Enforcement

V.T.C.A., Government Code § 552.321

§ 552.321. Suit for Writ of Mandamus

Effective: January 1, 2020
Currentness

(a) A requestor or the attorney general 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 request an attorney general's decision as provided by Subchapter G [1] or refuses to supply public information or information that the attorney general has determined is public information that is not excepted from disclosure under Subchapter C. [2]

(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. A suit filed by the attorney general under this section must be filed in a district court of Travis County, except that a suit against a municipality with a population of 100,000 or less must be filed in a district court for the county in which the main offices of the municipality are located.

(c) A requestor may file suit for a writ of mandamus compelling a governmental body or an entity to comply with the requirements of Subchapter J.

Credits

Added by Acts 1993, 73rd Leg., ch. 268, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1035, § 24, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1319, § 27, eff. Sept. 1, 1999; Acts 2019, 86th Leg., ch. 1216 (S.B. 943), § 8, eff. Jan. 1, 2020.

Footnotes

1 V.T.C.A., Government Code § 552.301 et seq.

2 V.T.C.A., Government Code § 552.101 et seq.

V. T. C. A., Government Code § 552.321, TX GOVT § 552.321
Current through the end of the 2021 Regular and Called Sessions of the 87th Legislature.

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