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THERESA CHANG
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HARRIS COUNTY
2008-75633
CASE NO. PM 1:48
2008 DEC 25

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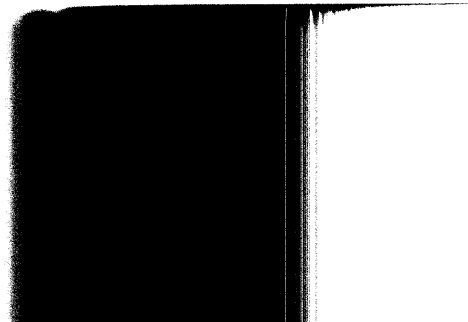
RANDALL KALLINEN § IN THE DISTRICT COURT OF
and BY §
PAUL KUBOSH § DEPUTY
§
v. § HARRIS COUNTY, TEXAS
§
CITY OF HOUSTON, TEXAS § 295 JUDICIAL DISTRICT

**ORIGINAL PETITION FOR MANDAMUS AND
FOR DECLARATORY JUDGMENT**

NOW COMES the Randall Kallinen and Paul Kubosh and file this their Original Petition for Mandamus and for Declaratory Judgment against the City of Houston, Texas for release under the Public Information Act of reports on the efficacy of red light cameras prepared by Robert Stein of Rice University at the direction of the City and that no exception exists to allow withholding of this information and and would respectfully show the Court the following.

**I.
Parties**

1. Plaintiff Randall Kallinen is a resident of Houston, Harris County, Texas. Mr. Kallinen is a person requesting information under the Public Information Act.
2. Plaintiff Paul Kubosh is a resident of Houston, Harris County, Texas. Mr. Kubosh is also a person requesting information under the Public Information Act.
3. Defendant City of Houston is a Texas Home Rule Municipality. It may be served by service upon its Mayor Bill White at 901 Bagby Street, Houston, Texas 77002.



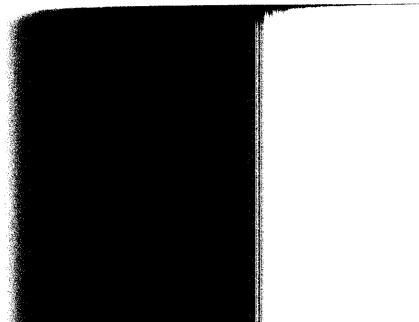
II.
Venue and Jurisdiction

4. Messrs. Kallinen and Kubosh file this lawsuit pursuant to Tex. Gov. Code § 522.321 and the Texas Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code §§ 37.001, *et seq.* Venue is proper in Harris County pursuant to Tex. Civ. Prac. & Rem. Code § 15.015.

III.
Facts and Authorities

5. Plaintiffs bring this suit under the Texas Public Information Act, Tex. Gov. Code § 552.001, for reports prepared on behalf of the City by Rice University Professor Robert Stein regarding the efficacy of red light cameras installed by the City. The first of these reports was prepared and delivered to the City no later than August of 2008. There have been several subsequent reports prepared and sent to the City by Mr. Stein. City officials have conferred regarding all these reports and used them in connection with the City's official business. They were sent back to Mr. Stein with instructions to make edits or changes to the report.

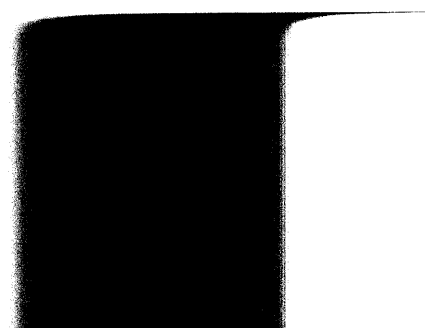
6. Tex. Gov't Code Section 552.321 confers upon the trial court the authority to issue a writ of mandamus where the governmental body refuses to supply public information. *Thomas v. Cornyn*, 71 S.W.3d 473, 481 (Tex. App.—Austin, 2002, no pet.). The City has refused to release the reports despite repeated requests and has therefore clearly refused to supply public information. This matter is ripe under the Public Information Act as well as the Texas Declaratory Judgments Act. According to Patrick Trahan, spokesman for the Mayor, "since the report is still in draft form, technically, the city is not in possession of it and therefore cannot release it." However, there is no such "technical" exclusion to the Public Information Act and the City's refusal to release the reports



subjects it to mandamus to perform its ministerial duty of releasing public information.

7. The same argument to withhold a “draft” report was attempted by the City of Garland to attempt to block release of a report critical of its finance director that had been prepared in anticipation of firing the finance director, but never actually delivered to him. The City of Garland claimed the report could be withheld from the public because it “never finalized or sent the memorandum to the finance director.” The report, the City of Garland argued, “was just a draft and is not public information under section 552.022 of the Act.” The Texas Supreme Court rejected this argument stating that “to allow a governmental body to exempt otherwise public documents from the Act simply by labeling or calling them ‘drafts’ would invite governmental bodies to circumvent the Act’s purpose of broad public access to governmental information.” *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 358-59 (Tex. 2000).

8. The facts are that Mr. Stein has delivered the August report and subsequent reports to City officials who reviewed and evaluated them in the course of the City’s official business. Whatever position one may have regarding red light traffic cameras, the City is not entitled to withhold a report on the grounds that it is a “draft” report after it has been sent to the City and that City officials reviewed and evaluated, and then sent back to Mr. Stein with instructions to revise the report. This is the very danger the Texas Supreme Court warned of if a governmental body could withhold a document simply by labelling it a “draft.” The City wants to be able to label a report that it has received, but that it doesn’t like, as a draft, and repeatedly request revisions until it gets the report it wants. This is in contravention of the fundamental purpose of the Public Information Act and would “circumvent the Act’s purpose of broad public access to governmental information.” To



accept the City's argument would be to create an exception to the Act which doesn't exist and which the Texas Supreme Court has expressly rejected.

IV.

Count One: Mandamus

9. Plaintiffs repeat and reallege each of the foregoing paragraphs as if set forth fully herein.

10. The release of public information is a ministerial duty and the failure to perform that duty subjects the City of Houston to mandamus. *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.--Dallas 1999, no pet.).

11. The remedy of mandamus is specifically available to plaintiffs under the Public Information Act. Tex. Gov. Code § 552.321. The report prepared by Mr. Stein is public information.

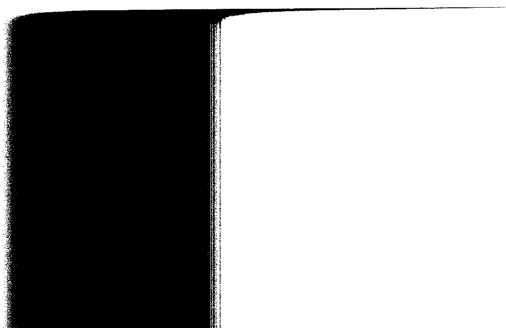
V.

Count Two: Declaratory Judgment

12. Plaintiffs repeat and reallege each of the foregoing paragraphs as if set forth fully herein.

13. The City of Houston is not in compliance with the Texas Public Information Act by reason of failing to release requested public information. A report that has been delivered to the governmental body and evaluated in connection with the governmental body's official business is public information .

14. Messrs. Kallinen and Kubosh are entitled to a declaratory judgment regardless of whether or not additional relief is or could be claimed, whether by a mandamus or otherwise. Tex.



Civ. Prac. & Rem. Code § 37.003(a).

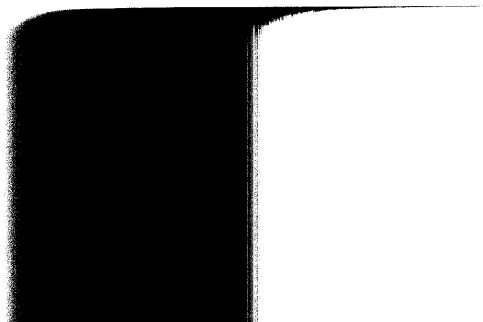
15. Plaintiffs accordingly request a declaration from this Court by final order that the information sought by the plaintiffs is public information and not subject to any exception to the Texas Public Information Act.

VI.
Count Three: Attorneys' Fees

16. Plaintiffs seek recovery of all costs incurred herein and their reasonable attorney's fees, pursuant to the express authority granted in the Public Information Act, Tex. Gov. Code § 552.323, and the Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code § 37.009.

WHEREFORE, PREMISES CONSIDERED, the Randall Kallinen and Paul Kubosh respectfully request that the Court set the foregoing matters for full and final hearing on an accelerated basis at the earliest possible date, and that upon final hearing, Plaintiffs be granted the following relief:

- (1) That an order of mandamus issue compelling the City of Houston to release the red light camera reports prepared by Robert Stein;
- (2) That final judgment be entered declaring that the red light camera reports prepared by Robert Stein are public information and not subject to any exception to the Public Information Act;
- (3) That final judgment be entered for Plaintiffs for their reasonable attorneys' fees, taxable costs of court, and all of the costs of litigation; and
- (4) That the Court grant Plaintiffs such other and further relief, at law or in equity, as they may be entitled to receive.

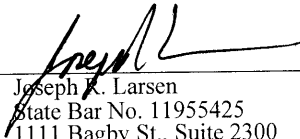


DATED this 26th day of December, 2008.

Respectfully submitted,

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: _____


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