

D-1-GN-18-004243
No. _____

GATEHOUSE MEDIA, LLC	§	IN THE DISTRICT COURT OF
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES	§	250TH ____ JUDICIAL DISTRICT

ORIGINAL PETITION FOR MANDAMUS

To the Honorable Court:

GateHouse Media, LLC files this petition seeking a writ of mandamus to compel the Texas Department of Family and Protective Services to disclose public information under the Texas Public Information Act, TEX. GOV'T CODE § 552.001, *et seq.*

Discovery Level

1. Discovery in this action should proceed under Level 2 pursuant to TEX. R. CIV. P. 190.2.

Parties

2. Petitioner GateHouse Media, LLC is a Delaware limited liability corporation.

3. Respondent Texas Department of Family and Protective Services (DFPS) is an agency of the State of Texas and may be served with process by certified

mail addressed to its Commissioner: Henry “Hank” Whitman, Jr., P.O. Box 149030, Austin, Texas 78714-9030.

Jurisdiction and Venue

4. This Court has jurisdiction to issue a writ of mandamus to require a governmental body to comply with the Texas Public Information Act pursuant to TEX. GOV'T CODE § 552.321.

5. Pursuant to TEX. R. CIV. P. 47(c), GateHouse states that it seeks non-monetary relief only.

6. Venue is mandatory in Travis County, because the main offices of DFPS are located in Travis County. TEX. GOV'T CODE § 552.321(b).

Factual and Legal Basis for Issuance of Writ

7. GateHouse publishes the *Austin American-Statesman*, a daily newspaper serving the Central Texas market. Sean Collins Walsh is a reporter for the *Statesman* who covers state government and politics.

8. DFPS is a “governmental body” subject to the requirements of the Texas Public Information Act.

9. On May 29, 2018, GateHouse, through its employee Mr. Walsh, submitted a public-information request to DFPS for “copies of all investigations or reports on deaths of children in Texas daycare centers or homes from May 24, 2013, to present. This includes deaths that occurred at listed, registered, licensed and

unlicensed daycare centers or homes.” A true and correct copy of the public-information request is attached as Exhibit A and incorporated herein by reference.

10. DFPS has refused to supply the public information requested by GateHouse. All of the information requested by GateHouse and withheld by DFPS is “public information” within the meaning of the Act. The Act defines “public information” to mean all information that is “written, produced collected, assembled, or maintained under law or ordinance or in connection with the transaction of official business.” TEX. GOV’T CODE § 552.002(a).

11. DFPS has failed to comply with the Texas Public Information Act’s procedural requirements for a governmental body to withhold information from a requestor. Specifically, DFPS has not timely requested a decision from the attorney general that the information is within one of the exceptions to disclosure, as required by Section 552.301(a) of the Act. Nor has DFPS provided GateHouse with the written statements regarding its purported reasons for withholding the requested information within the time frames required by Sections 552.301(d) and 552.301(e). Accordingly, the information requested by GateHouse “is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” TEX. GOV’T CODE § 552.302.

12. On June 27, 2018, DFPS provided GateHouse with a “legal statement” explaining its position that the requested information is confidential by statute and

therefore not subject to public inspection. A true and correct copy of this legal statement is attached as Exhibit B and incorporated herein by reference.

13. DFPS first contends that the specific statute requiring public disclosure of information related to child fatalities, TEX. FAMILY CODE § 261.203, does not apply to child deaths in daycare centers or homes. The statute contains no such limitation. For ongoing investigations of a child fatality involving an allegation of abuse and neglect, the statute requires prompt release of certain basic information about the circumstances of the death. TEX. FAMILY CODE § 261.203(a). For completed investigations in which the department concludes that abuse or neglect caused a child's death or near death, "the department on request shall promptly release investigation information not prohibited from release under federal law." TEX. FAMILY CODE § 261.203(b). Neither provision limits the scope of the information to any particular facility, and these disclosure requirements fully apply to a child's death in a daycare center or home.

14. DFPS also contends that Section 261.201 of the Texas Family Code makes the information requested by GateHouse confidential. But that statute contains an exception for daycare centers and homes. "This section does not apply to an investigation of child abuse or neglect in a home or facility regulated under Chapter 42, Human Resources Code." TEX. FAMILY CODE § 261.201(h). Section 42.002 of the Human Resources Code defines the facilities regulated by that Chapter 42 to include the "Texas daycare centers or homes" referenced in the public-information request.

15. DFPS thus has no legal basis for withholding the requested information. Section 261.203 requires the Department to release it, and Section 261.201 does not prohibit the Department from releasing it. This Court should therefore order DFPS to produce to GateHouse the public information requested in Exhibit A.

Request for Relief

16. GateHouse seeks a writ of mandamus pursuant to Section 552.321(a) of the Act compelling DFPS to make the information requested in the public-information request attached as Exhibit A available for public inspection.

17. GateHouse seeks an assessment against DFPS of the costs of litigation and reasonable attorneys' fees incurred in this matter. TEX. GOV'T CODE § 552.323(a).

Conditions Precedent

18. Pursuant to TEX. R. CIV. P. 54, all conditions precedent have been performed or have occurred.

Prayer

19. Petitioner GateHouse Media, LLC prays that this Court issue a writ of mandamus requiring Respondent Texas Department of Family and Protective Services to make the requested public information available; award GateHouse its court costs, costs of litigation, and reasonable attorneys' fees; and award GateHouse judgment interest to the fullest extent allowed by law. GateHouse prays for such other

and further relief, whether at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

GRAVES, DOUGHERTY, HEARON & MOODY,
A Professional Corporation
401 Congress Ave., Suite 2200
Austin, Texas 78701
(512) 480-5600
(512) 480-5804 - telecopier

By: /s/William Christian
William Christian
State Bar No. 00793505

ATTORNEYS FOR PETITIONER
GATEHOUSE MEDIA, LLC