

Ana Martinez

CAUSE NO. DC-23-449

JOHN BUXIE	§	IN THE DISTRICT COURT
<i>Petitioner</i>	§	
	§	
v.	§	
	§	OF STARR COUNTY, TEXAS
RIO GRANDE CITY GRULLA ISD and	§	
ADOLFO PEÑA, JR., in his official capacity	§	
as superintendent of Rio Grande City	§	
Grulla ISD	§	
<i>Respondents</i>	§	<u>381st</u> JUDICIAL DISTRICT

Original Petition for Writ of Mandamus
Under Section 552.321(a) of the Texas Government Code

Petitioner John Buxie (“Buxie”) files this Original Petition for Writ of Mandamus under the Texas Public Information Act (“PIA”), Chapter 552 of the Texas Government Code, against Respondents Rio Grande City Grulla ISD and Adolfo Pena, Jr., in his official capacity as superintendent of the Rio Grande City Grulla ISD (collectively the “ISD”), and alleges as follows:

Discovery Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure 190.3 and affirmatively pleads that this case is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because the relief sought includes non-monetary injunctive relief.

Parties

2. Petitioner John Buxie is a resident of the State of Texas. Petitioner is the public information requestor.

3. Respondent Rio Grande City Grulla ISD is an independent school district located in Starr County, Texas.

4. Respondent Adolfo Pena, Jr. (“Pena”) is the superintendent of the ISD and is responsible for managing the day-to-day operations of the district as its administrative manager. Tex. Educ. Code § 11.201(d). Thus, the superintendent is the public information officer for the ISD. Tex. Gov’t Code § 552.201(a).

5. Respondents may be served with civil process by serving Adolfo Pena, Jr., Superintendent, or Eduardo Ramirez, President of the Board of Trustees, at 1 Fort Ringgold, Rio Grande City, Texas 78582. Tex. Civ. Prac. & Rem. Code § 17.024(c).

Jurisdiction and Venue

6. The Court has jurisdiction over this mandamus action under Tex. Gov’t Code § 552.321(a).

7. Venue is proper in Starr County, Texas. Tex. Gov’t Code § 552.321(b).

Background

8. The Texas Legislature enshrined the Public Information Act into law on the explicit premise that “government is the servant and not the master of the people” so “it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees.” Tex. Gov’t Code § 552.001.

9. Specifically, the Legislature enshrined in law a policy that: “The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.” *Id.* Thus, under state law, governments are banned from simply choosing to unilaterally withhold public information from citizens.

10. The Legislature further provided that: “The people insist on remaining informed so that they may retain control over the instruments they have created.” *Id.* To further enforce this policy, the Legislature commanded that: “The provisions of this chapter shall be liberally construed to implement this policy.” *Id.*

Facts of the Case

11. On July 28, 2023, Buxie sent two public information requests to the ISD requesting information regarding two employees of the ISD, Jessica Vera-Rios and Jose Villarreal. *Exhibit A.* Buxie subsequently corrected the request regarding Jose Villarreal on July 31, 2023. *Exhibit B.* The public information requests were emailed to Pena at apena042@rgccisd.org, an email with which Buxie had corresponded with Pena previously.

12. On September 6, 2023, after receiving no response from the ISD, Buxie sent Pena and Baltazar Salazar, general counsel for the ISD, a follow-up letter requesting the documents previously requested. *Exhibit C.* No response to this letter was received.

13. On or about September 6, 2023, Buxie also contact the Texas Attorney General’s Office (“OAG”) to initiate a complaint regarding the ISD’s failure to respond to his public information requests. The OAG’s office has informed Buxie that they have not received any response to their communications to Pena and the ISD.

14. As of the filing of this Petition for Mandamus, Buxie has not received any response or documents from the ISD.

Cause of Action

15. Buxie files this suit for writ of mandamus under the PIA, Tex. Gov't Code § 552.321 to compel Respondents to make public information available to the requestor. Buxie is entitled to mandamus because Respondents have refused to supply public information.

16. Respondents were required to promptly produce public information requested by Buxie. Tex. Gov't Code § 552.221(a). Despite the legal requirement to do so, Respondents failed to produce any of the public information requested.

17. The PIA provides Respondents a process for withholding public information. *Id.* at § 552.301. Respondents did not avail themselves of this process. Respondents' failure to make a timely request to withhold information creates the presumption that the information requested by Buxie is public information and must be released. *Id.* at § 552.302.

Claim for Attorney's Fees

18. If he prevails in this lawsuit, Buxie requests reasonable attorney's fees and litigation costs under Tex. Gov't Code § 552.323(a).

Request for Disclosure

19. Petitioner requests that Respondents disclose information or material as required by Tex. R. Civ. P. 194.2.

Conclusion and Prayer

20. The Texas Legislature provided law and policy under which "[t]he people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." Tex. Gov't Code § 552.001. The

ISD's failure to respond or provide public information, however, contradict both Texas law, through the PIA, and Texas's policy of open government.

21. Petitioner John Buxie respectfully asks the Court to summon Respondents to show cause why a writ of mandamus should not be issued, and, after final hearing, to issue a writ of mandamus compelling Respondents to make the information requested available to the Petitioner.

22. Petitioner further asks that all costs of litigation, including court costs and attorney's fees, be adjudged against Respondents.

23. Petitioner further prays for such other and further relief to which he may be entitled.

Respectfully submitted,

/s/ John Buxie
John Buxie
State Bar No. 24072555
PO Box 685201
Austin, Texas 78768
Telephone: (214) 801-1038
Jbuxie@gmail.com
Attorney for Petitioner



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

September 6, 2023

Mr. Adolfo Pena
Superintendent of Schools
Rio Grande City Grulla Independent School District
1 Fort Ringgold
Rio Grande City, TX 78582
Sent via e-mail.

Dear Mr. Pena:

The Office of the Attorney General (the "OAG") has received a complaint from John Buxie alleging the Rio Grande City Grulla Independent School District (the "[GB]") has failed to respond appropriately to a request for information. The complaint was assigned ID# OR-23-084959-IC.

The Public Information Act (the "Act"), chapter 552 of the Texas Government Code, generally requires a governmental body to release requested public information that it collects, assembles, maintains, or has right of access to, or to request a ruling from the OAG as to the applicability of exceptions to the Act. Our records do not indicate a request for an OAG ruling has been made in accordance with section 552.301 of the Act.

Although the OAG has civil enforcement authority under the Act, our office prefers to work with governmental bodies and requestors to resolve complaints informally. The easiest way to resolve this open records complaint is to release the requested information, provided the information is not confidential by law.

Please provide a written response to this letter within 10 business days. *See* 1 T.A.C. § 70.11(d)(3) (governmental body has a responsibility under the Act to promptly respond). A certification form is enclosed with this letter in order to expedite your response. You may use the form to certify: (i) the requested information has been or will be released to the requestor; (ii) the Rio Grande City Grulla Independent School District has no information responsive to the request; or (iii) the Rio Grande City Grulla Independent School District has requested or will request an attorney general's decision regarding the requested information. If the form is not applicable, you may provide a written response to this notification letter explaining how the Rio Grande City Grulla Independent School District has complied with the Act. The written response may be sent to the address below or faxed to the Education and Enforcement Section at (512) 481-1992.

Mr. Adolfo Pena- Page 2

If you have any questions regarding this letter, please contact the Education and Enforcement Section of the Open Records Division at (877) 673-6839 or (512) 936-6736 to discuss the resolution of this complaint. You will also find resources to assist you in complying with the Act at <https://www.texasattorneygeneral.gov/open-government>.

Thank you for your prompt attention to this matter.

Sincerely,

Education and Enforcement Section
Open Records Division

Enclosure

c: Mr. John Buxie
Sent via E-mail.

**PUBLIC INFORMATION ACT REQUEST CERTIFICATION FROM
GOVERNMENTAL BODY**
RE: OAG ID# [File number]

Please complete this form to indicate the manner in which the referenced request will be or has been answered. Include your signature and date.

I am the officer of public information, or the authorized representative, for the following governmental body (the “governmental body”): _____
_____.

I am aware of a public information request to the governmental body from the requestor (the _____ “requestor”):
_____.

Please initial the certification that applies.

_____ I certify the governmental body has made available to the requestor all existing responsive information that this governmental body owns, controls, or has a right of access to.

_____ I certify the governmental body has conducted a good faith search of information that this governmental body owns, controls, or has a right of access to, and has found no such information that is responsive to the requestor’s public information request.

_____ I certify the governmental body has supplied the requestor all existing responsive information for which the governmental body is not claiming an exception, and has requested an attorney general’s decision regarding the responsive information the governmental body believes is excepted from disclosure.

Public Information Officer, or Authorized Representative

Signature

Date

Printed Name

Title