



COURT OF APPEALS  
EIGHTH DISTRICT OF TEXAS  
EL PASO, TEXAS

PAUL E. JOHNSON,	§	No. 08-20-00234-CV
	§	Appeal from the
v.	§	21st Judicial District Court
BASTROP CENTRAL APPRAISAL DISTRICT,	§	of Bastrop County, Texas
	§	(TC# 1560-21)
Appellee.		

**OPINION**

Appellant, Paul Johnson, pro se, appeals the trial court’s denial of his petition for mandamus. Appellant filed a petition for writ of mandamus regarding a records request of attorney fee bill information he made on Appellee, Bastrop Central Appraisal District (BCAD). In twelve issues, Appellant essentially argues he was entitled to mandamus relief and claims Appellee failed to establish it was entitled to governmental immunity.<sup>1</sup> We affirm.

***Factual & Procedural Background***

On June 6, 2020, Appellant sent a request to Appellee for “detailed billing records of attorney fees that BCAD [Appellee] has paid in all cases that involve Paul Johnson [Appellant].” In his written request, Appellant cited and quoted section 552.022(a)(16) of the Texas Government

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<sup>1</sup> This case was transferred from our sister court in Travis County, Texas pursuant to the Texas Supreme Court’s docket equalization efforts. See TEX.GOV’T CODE ANN. Section 73.001. We follow the precedent of the Austin Court of Appeals to the extent they might conflict with our own. See TEX.R.APP.P. 41.3.

Code, which defines public information to include, “information that is in a bill for attorney’s fees that is not privileged under the attorney-client privilege[.]” On June 19, 2020, Appellee responded by letter, informing Appellant it had a concern some of the requested information was prohibited from disclosure under the Public Information Act, and therefore “was not producing the requested information pending a determination by the Attorney General.” While the Attorney General’s determination was still pending, Appellant filed his application for writ of mandamus on July 10, 2020. On August 17, 2020, the trial court denied Appellant’s writ of mandamus. A few days later, on August 24, 2020, the Attorney General delivered its ruling on whether the requested information was subject to required public disclosure under the Public Information Act.

The Attorney General determined that some of the requested information contained within the billing records of attorney fees constituted privileged attorney work product, while other information was not and needed to be disclosed. The Attorney General specifically ruled:

Based on your representations and our review of the information at issue, we conclude some of the submitted information constitutes privileged attorney work product for purposes of rule 192.5. Accordingly, [Appellee] may withhold the information we marked under rule 192.5 of the Texas Rules of Civil Procedure. However, we find you have not demonstrated the remaining information at issue contains the mental impressions, opinions, conclusions, or legal theories of an attorney or the attorney’s representative that was developed in anticipation of litigation or for trial. Therefore, we conclude [Appellee] may not withhold any portion of the remaining information under rule 192.5. [Appellee] must release the remaining information pursuant to section 552.022(a)(16) of the Government Code.

Four days later, Appellee complied and provided Appellant with redacted versions of the billing records of attorney fees in accordance with the Attorney General’s ruling. This appeal followed.

## **DISCUSSION**

Appellant asserts in twelve issues the trial court erred in denying the writ of mandamus and finding Appellee’s governmental immunity had not been waived. Specifically, Appellant offers twelve issues for our review:

1. Is mandamus ever authorized by the Texas Government Code (TGC) Subchapter H since subchapter G is always an adequate remedy at law?
2. Does TGC 552.321(a) authorize a suit against a “governing body,” or against a “governmental body?”
3. Did the lower court have legally sufficient evidence to conclude that TGC 552.321(a) authorizes a suit against a “governing body?”
4. Is BCAD the proper party to a suit seeking a Writ of Mandamus to produce public records?
5. Did the lower court have legally sufficient evidence to conclude that BCAD is not a proper party to this suit?
6. Does BCAD have governmental immunity or sovereign immunity from a Writ of Mandamus to produce public records?
7. Did the lower court have legally sufficient evidence to conclude that BCAD’s governmental or sovereign immunity had not been waived?
8. Does the construction of TGC 552.321(a) authorize a suit for Writ of Mandamus for “refusing to supply information” only, or must BCAD refuse to supply information AND refuse to request an Attorney General’s (AG) opinion before a suit is authorized?
9. Does requesting an AG opinion extend the statutory time to respond to an open records request until the AG submits his opinion?
10. Did Johnson have to wait until the AG submitted his opinion for a Writ of Mandamus to be ripe for adjudication?
11. Did the lower court have legally sufficient evidence to conclude that this dispute is not ripe for adjudication?
12. Was denial of the application for Writ of Mandamus an abuse of discretion?

Appellant requests we reverse the trial court and grant the writ of mandamus, order Appellee to produce the requested billing records of attorney fees, and assess Appellant’s costs of litigation. We disagree.

### ***Standard of Review & Applicable Law***

To be entitled to mandamus relief, a Appellant generally must meet two requirements. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135 (Tex. 2004). First, the Appellant must show the trial court clearly abused its discretion. *Id.* at 135. Second, the Appellant must demonstrate there is no adequate remedy by appeal. *Id.* at 136-37; *see also Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 917 (Tex. 1985)(“Mandamus issues only to correct a clear abuse of discretion or the violation of a duty imposed by law when there is no other adequate remedy by law.”). The

burden is on the Appellant to show he is entitled to mandamus relief. *See In re Ford Motor Company*, 165 S.W.3d 315, 317 (Tex. 2005, orig. proceeding). “Even a pro se applicant for a writ of mandamus must show himself entitled to the extraordinary relief he seeks.” *In re Carrington*, 438 S.W.3d 867, 868 (Tex.App.—Amarillo 2014, orig. proceeding)(quoting *Barnes v. State*, 832 S.W.2d 424, 426 (Tex.App.—Houston [1st Dist.] 1992, orig. proceeding)(per curium).

### **The Public Information Act**

The purpose of the Public Information Act (The Act) is to provide public access “at all times to complete information about the affairs of government and the official acts of public officials and employees.” *See* TEX.GOV’T CODE ANN. § 552.001. Upon a request for public information, an officer for public information of a governmental body shall promptly produce the public information for inspection, duplication, or both. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 357 (Tex. 2000)(citing TEX.GOV’T CODE ANN. § 552.221). “Promptly” means as soon as possible under the circumstances—that is, within a reasonable time and without delay. TEX.GOV’T CODE ANN. § 552.221(a). Public information is defined as:

- (a) [I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:
  - (1) by a governmental body;
  - (2) for a governmental body and the governmental body:
    - (A) owns the information;
    - (B) has a right of access to the information; or
    - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information;
    - or
  - (3) 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.

*Id.* § 552.002(a). If a governmental body considers the requested information exempt from disclosure and no previous determination has been made on the subject, the Act requires the

governmental body to submit written statements to the Attorney General about why the information should be withheld, and request an opinion from the Attorney General no later than the tenth day after receiving the request. *See id.* § 552.301.

### *Analysis*

#### **I. Appellant did not establish his right to mandamus relief**

A writ of mandamus may be sought to compel a governmental body to make information available for public inspection. *See id.* § 552.321(a). Section 552.321 states:

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 . . . **or** refuses to supply public information or information that the attorney general has determined is public information that is not excepted from disclosure.

*Id.* (emphasis added). In other words, a governmental body will be compelled to make information available only when the governmental body refuses to request an Attorney General opinion, or when the governmental body refuses to supply public information or information the Attorney General has determined is public. *See id.* § 552.321.

In our review of the instant matter, there is no evidence to support the issuance of a writ of mandamus under the above authorized circumstances.

#### **A. Appellee requested an Attorney General decision**

A requestor of public information may file suit for a writ of mandamus to compel a governmental body to produce information for public inspection if the governmental body refuses to request an attorney general’s decision. *Id.* § 552.321. After Appellant requested the billing records of attorney fees, counsel for Appellee responded:

The Bastrop Central Appraisal District (“BCAD”) is in receipt of your request for “the detailed billing records of attorney fees that BCAD has paid in all cases that involve Paul Johnson.” However, BCAD is concerned that the information is prohibited from disclosure pursuant to TEX. GOV’T CODE § 552.022(a), TEX. R. CIV. P. 192.5, and *In re National Lloyds Insurance Company*, 532 S.W.3d 794 (Tex.

2017). Therefore, BCAD is not producing the requested information, pending a determination by the Attorney General. A copy of the BCAD's request for an opinion of the Attorney General is included.

Moreover, Appellant, in his application for writ of mandamus, and Appellee, in its response to the application for writ, *both* pleaded that Appellee requested an Attorney General opinion. On August 24, 2020, the Attorney General responded to Appellee's request. In its ruling, the Attorney General stated: "You ask whether certain information is subject to required public disclosure under the Public Information Act (the Act), chapter 552 of the Government Code. Your request was assigned ID# 841410[.]" and then proceeded to explain its ruling. Accordingly, it is undisputed that Appellee requested an Attorney General opinion. Appellant is not entitled to mandamus relief on this ground.

**B. Appellee did not refuse to provide public information or information the Attorney General determined is public information**

A requestor of public information may file suit for a writ of mandamus to compel a governmental body to produce information for public inspection if the governmental body refuses to supply public information, or information that the attorney general has determined is public information that is not excepted from disclosure. *Id.* § 552.321. Appellee's response to Appellant's request stated:

[The Bastrop Central Appraisal District] is concerned that the information is prohibited from disclosure pursuant to TEX. GOV'T CODE § 552.022(a), TEX. R. CIV. P. 192.5, and *In re National Lloyds Insurance Company*, 532 S.W.3d 794 (Tex. 2017). Therefore, BCAD is not producing the requested information, pending a determination by the Attorney General . . . .

Here, Appellee did not refuse to supply public information or information that the Attorney General determined is public information; Appellee merely stated it would not be producing the requested information *pending a determination by the Attorney General*. In fact, the Attorney General's determination was still pending when Appellant filed his writ of mandamus on July 10,

2020. On August 17, 2020, the trial court denied Appellant's writ of mandamus and the Attorney General's determination was *still* pending. A few days later, on August 24, 2020, the Attorney General delivered its ruling on whether the requested information was subject to required public disclosure under the Act. Four days after the ruling, Appellee complied and provided Appellant with redacted versions of the billing records of attorney fees in accordance with the Attorney General's ruling. Thus, it is undisputed that Appellee complied with the Attorney General's ruling. More importantly, no finding was made and no evidence before the trial court supports the proposition that Appellee withheld any public information. Accordingly, Appellant has not shown that Appellee refused to produce information the Attorney General determined is public. Appellant is not entitled to mandamus relief on this ground.

### **C. Appellant had an adequate remedy at law**

At the time Appellant filed his application for writ of mandamus, the Attorney General's determination was still pending, thus Appellant had an adequate remedy at law.<sup>2</sup> Mandamus will only issue to correct a clear abuse of discretion when there is no adequate remedy at law. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d at 136-37. Appellant is not entitled to mandamus relief on this ground.

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<sup>2</sup> Moreover, Appellee argues the trial court did not abuse its discretion because the matter was not yet ripe when Appellant filed his application for writ of mandamus. We agree. Under the ripeness doctrine, we determine whether, at the time a lawsuit is filed, the facts are sufficiently developed "so that an injury has occurred or is likely to occur, rather than being contingent or remote." *Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851-52 (Tex. 2000)(quoting *Patterson v. Planned Parenthood of Houston & Southeast Texas, Inc.*, 971 S.W.2d 439, 442 (Tex. 1998)). Thus, a ripeness analysis focuses on whether the case involves future events that are uncertain, contingent, that may not occur as anticipated, or that may not occur at all. *Id.* In the instant matter, Appellee notified Appellant that the requested information was being withheld pending a determination from the Attorney General. The writ of mandamus was filed while the parties awaited a ruling from the Attorney General. Appellee argues it was unclear at this time what the Attorney General's determination would be and whether or not Appellee would provide the requested information in accordance with the Attorney General's determination. We agree. Accordingly, on the facts of this case, the matter was not yet ripe at the time Appellant filed his writ of mandamus. For this additional reason, we find the trial court did not abuse its discretion in denying the writ of mandamus. Issues Ten and Eleven are overruled.

Because Appellant has not shown that Appellee refused to request an Attorney General’s decision or refused to supply public information or information that the Attorney General determined is public information, we do not see how the trial court clearly abused its discretion in denying mandamus relief. We are therefore unable to identify a clear abuse of discretion by the trial court. Accordingly, without a clear abuse of discretion, and because Appellant had an adequate remedy at law, we find the trial court correctly ruled Appellant was not entitled to mandamus relief. The trial court did not abuse its discretion in denying the writ of mandamus.

Issue Twelve is overruled.

## **II. Appellant did not overcome Appellee’s governmental immunity**

Appellee is a political subdivision of the State of Texas. *See* TEX.TAX CODE ANN. § 6.01(c). As such, it is entitled to governmental immunity. *See City of Dallas v. Albert*, 354 S.W.3d 368, 384 n.2 (Tex. 2011)(“The State’s immunity is referred to as sovereign immunity, while that of political subdivisions of the State is referred to as governmental immunity.”). Governmental immunity from suit deprives the trial court of subject matter jurisdiction over claims against a governmental entity unless the complaining party establishes the State’s consent to suit. *Id.* at 374.

We begin our analysis with a review of Section 552.321(a) of the Texas Government Code, which provides:

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 . . . or refuses to supply public information or information that the attorney general has determined is public information[.]

TEX.GOV’T CODE ANN. § 552.321(a). Within the statute is language that imposes a prerequisite to filing suit—specifically, a requestor may file suit *only* upon showing that the governmental body “refuses to request an attorney general’s decision[.]” or “refuses to supply public information or information that the attorney general has determined is public information[.]” *See City of*



*Galveston v. CDM Smith, Inc.*, 470 S.W.3d 558, 572 (Tex.App.—Houston [14th Dist.] 2015, pet. denied)(“By its plain terms, the Act’s waiver of immunity for mandamus relief requires the [governmental entity] to have ‘refuse[d]’ to supply public information.”). Additionally, “[t]he Legislature has mandated that all statutory prerequisites to suit are jurisdictional in suits against governmental entities.” *Prairie View A&M Univ. v. Chatha*, 381 S.W.3d 500, 515 (Tex. 2012)(citing TEX.CIV.PRAC.& REM.CODE ANN.§ 311.034.) The Texas Supreme Court has also held that all statutory prerequisites are jurisdictional requirements as to governmental entities and are properly asserted in a plea to the jurisdiction. *Id.* at 511.

Here, Appellee responded to the writ of mandamus by asserting the affirmative defense of governmental immunity and filing a plea to the jurisdiction. We conclude that the requirements of section 552.321 have created a statutory prerequisite to the waiver of immunity permitting a requestor to seek a writ of mandamus in a district court.

As discussed at great length above, Appellant has failed to establish that Appellee refused to request a decision by the Attorney General, or refused to supply public information or information the Attorney General determined is public information. Appellant has failed to establish any of the prerequisites of Section 552.321 of the Texas Government Code. Thus, the trial court did not clearly abuse its discretion in concluding Appellee’s immunity was not waived and in denying the writ of mandamus.

Even if Appellant was entitled to a writ of mandamus, BCAD’s governmental immunity has not been waived. Issues Six and Seven are overruled.

### **CONCLUSION**

Having found Appellant is not entitled to a writ of mandamus and BCAD has not waived their governmental immunity, accordingly, we do not reach Appellant’s Issues One, Two, Three, Four, Five Eight, and Nine.

For these reasons, we affirm the trial court's judgment.

YVONNE T. RODRIGUEZ, Chief Justice

September 29, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.