



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-23-00173-CV

PAUL JOHNSON, APPELLANT

V.

BASTROP CENTRAL APPRAISAL DISTRICT, APPELLEE

On Appeal from the 335th District Court
Bastrop County, Texas¹
Trial Court No. 2274-335, Honorable Reva Towslee-Corbett, Presiding

August 30, 2023

MEMORANDUM OPINION

Before **PARKER** and **DOSS** and **YARBROUGH, JJ.**

Paul Johnson appeals from an order denying his petition for writ of mandamus. Johnson filed his petition after the Bastrop Central Appraisal District (BCAD) failed to

¹ Originally appealed to the Third Court of Appeals, this appeal was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. TEX. GOV'T CODE ANN. § 73.001. Should a conflict exist between precedent of the Third Court of Appeals and this Court on any relevant issue, this appeal will be decided in accordance with the precedent of the transferor court. TEX. R. APP. P. 41.3.

provide him with public records he requested pursuant to the Texas Public Information Act (TPIA). We affirm the trial court's order.

BACKGROUND

On November 30, 2022, Johnson made a request for public records to the email address designated by BCAD for TPIA requests. Specifically, Johnson requested, "I want to know who actually made the database entry listing the agricultural market valuation as \$4,137, when they made that database entry, and, if [they] were making the entry at the direction of someone else, who that other person was" and "I also want to know who actually made the database entry listing the agricultural market valuation as [\$]0, when they made that database entry, and, if they were making the entry at the direction of someone else, who that other person was." Under TPIA, BCAD had ten business days to provide the requested information or notify Johnson that it was requesting an Attorney General decision regarding the request. See TEX. GOV'T CODE ANN. §§ 552.221(d), .301(d). After BCAD failed to either provide the requested information or notify Johnson that it was requesting an opinion from the Attorney General, Johnson filed the instant petition for writ of mandamus. BCAD's answer to Johnson's petition was an unverified general denial. At the time it filed its answer, BCAD also filed a plea to the jurisdiction asserting that there was no justiciable controversy because BCAD did not have any public records responsive to Johnson's requests.

On January 24, 2023, the trial court denied Johnson's petition. Johnson filed a request for findings of fact and conclusions of law. The trial court found, inter alia, that no documents existed that responded to Johnson's questions, there was no justiciable

controversy between Johnson and BCAD, and Johnson failed to meet his burden of establishing his entitlement to mandamus relief. Johnson subsequently filed a request for additional findings and conclusions, specifically about the lack of a verified answer from BCAD. The trial court did not issue additional findings and conclusions. Johnson timely filed the instant appeal.

LAW AND ANALYSIS

Johnson presents two issues by his appeal. Those issues contend that BCAD answered Johnson's petition with an unverified general denial. As a result, Johnson argues that this Court must accept all factual allegations made in Johnson's petition as true. BCAD argues that Johnson failed to meet his burden to prove his entitlement to mandamus relief, including by failing to establish that a justiciable controversy exists between himself and BCAD.

To be entitled to mandamus relief, the petitioner generally must meet two requirements. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135 (Tex. 2004) (orig. proceeding). First, he must show that the trial court clearly abused its discretion. *Id.* Second, he must show that he has no adequate remedy by appeal. *Id.* at 135–36. The relator bears the burden to properly request and show entitlement to mandamus relief. *In re Carrington*, 438 S.W.3d 867, 868 (Tex. App.—Amarillo 2014, orig. proceeding). “Even a *pro se* applicant for a writ of mandamus must show himself entitled to the extraordinary relief he seeks.” *Id.* (quoting *Barnes v. State*, 832 S.W.2d 424, 426 (Tex. App.—Houston [1st Dist.] 1992, orig. proceeding) (per curiam)).

“Public information” is defined as “information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” TEX. GOV’T CODE ANN. § 552.002(a). The TPIA “compels disclosure of public information that is in existence, but it does not require a government entity to prepare or assemble new information in response to a request.” *A & T Consultants v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995) (orig. proceeding) (analyzing predecessor to TPIA). The Attorney General has issued a decision in accord with *Sharp* that has been adopted by the transferor court in the present case. See *City of El Paso v. Abbott*, 444 S.W.3d 315, 326 (Tex. App.—Austin 2014, pet. denied) (citing Tex. Att’y Gen. ORD–555 (1990)). This AG decision states:

The Open Records Act does not require governmental bodies to provide answers to general inquiries. Open Records Decision No. 342 (1982). It simply requires, with certain exceptions, that governmental bodies make available information they collect, assemble, or maintain. . . .

The Open Records Act does not mandate the creation of new documents or the compilation of information in response to a request. Open Records Decision No. 342 (1982). Only that information in existence is subject to disclosure. Id.

Tex. Att’y Gen. ORD–555 (1990).

In the present case, Johnson does not meet his burden to show that the trial court clearly abused its discretion as a matter of law. As noted above, he requested the identity of the persons making certain valuation entries, when those entries were made, and the identity of any person directing those persons to make those entries. As such, Johnson did not request records that were already in existence. See *Sharp*, 904 S.W.2d at 676 (TPIA compels disclosure of public information in existence but does not require new

information to be assembled to respond to a request). Rather, he requested specific answers to general inquiries. See Tex. Att’y Gen. ORD–555 (1990) (TPIA does not require governmental entities to provide answers to general questions). Because Johnson failed to prove that a justiciable controversy exists in the present case, we conclude that the trial court did not err in denying Johnson’s petition for writ of mandamus.

We note that Johnson contends that, because BCAD failed to file a verified denial to his petition for writ of mandamus, we must accept all factual allegations he made in his petition as true. Johnson cites cases supporting his proposition and we accept his articulation of the law as correct. See *Hays v. Kessler*, 564 S.W.2d 496, 497 (Tex. Civ. App.—Dallas 1978, orig. proceeding) (“We recognize that when no sworn denial of facts alleged in a petition for mandamus is filed, all factual allegations in the petition must be accepted as true.”); *Narro Warehouse, Inc. v. Kelly*, 530 S.W.2d 146, 148 (Tex. Civ. App.—Corpus Christi–Edinburg 1975, writ ref’d n.r.e.) (when neither respondent or real party in interest filed verified denials to mandamus petition, “all allegations of fact contained in the petition must be accepted as true”); *Myers v. Zoning & Planning Comm’n of the City of West Univ. Place*, 521 S.W.2d 322, 324 (Tex. Civ. App.—Houston [1st Dist.] 1975, writ ref’d n.r.e.) (“Under the rules of pleading and practice in mandamus actions where defendants stand solely on an unverified general denial, plaintiff is entitled to summary judgment if his pleadings state facts entitling him to the relief sued for . . .”). However, nothing in the factual allegations in Johnson’s petition entitles him to mandamus relief. He makes no allegation that BCAD could respond to his inquiries by producing records already in existence. In fact, the only factual allegations contained in Johnson’s petition establish that his requests were properly submitted to BCAD and that, prior to him

filing the instant action, BCAD had neither provided him responsive information or notified him that it was requesting an AG opinion about the requests. Accepting Johnson's factual allegations as true does not change the fact that his petition does not present a justiciable controversy between the parties and, as such, the trial court did not err in denying Johnson's petition for writ of mandamus.

CONCLUSION

Having determined that Johnson has failed to meet his burden to prove his entitlement to mandamus relief, we affirm the trial court's order denying Johnson's petition.

Judy C. Parker
Justice