

Cause No. _____

EcoHub, LLC,

Petitioner,

v.

City of Houston, Texas,

Respondent.

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In the District Court

of Harris County, Texas

Judicial District

**Petitioner’s Original Petition for Writ of Mandamus
Under TEX. GOV’T CODE ANN. § 552.321(a)**

Trust happens when leaders are transparent.

Jack Welch
Former CEO, General Electric

In this Petition for Writ of Mandamus under the Texas Public Information Act, TEX. GOV’T CODE ANN. § 552.321(a), **EcoHub, LLC** (hereinafter “EcoHub” or “petitioner”) seeks an order from the Court compelling Respondent, **City of Houston, Texas** (“Respondent” or “the City”) to release public records requested by EcoHub months ago, as well as to review the City’s claims that certain responsive items are exempt from disclosure under the Public Information Act.

A.
PARTIES

1. Petitioner EcoHub, LLC is a Texas limited liability company in good standing which maintains its principal place of business in Harris County, Texas.

2. Respondent City of Houston, Texas is Texas Home Rule Municipality. It may be served by service upon its Mayor, Sylvester Turner, at 901 Bagby Street, Houston, Texas, 77002, along with a copy to the City Attorney, Ronald Lewis, at Legal Department, City Hall Annex, 900 Bagby, 4th Floor, Houston, Texas 77002.

B.
JURISDICTION, VENUE & CONDITIONS PRECEDENT

3. The Court has original subject matter jurisdiction under TEX. GOV'T CODE ANN. § 552.321(a). Venue is proper under TEX. GOV'T CODE ANN. § 552.321(b).

4. All necessary conditions precedent to the filing of this Petition have occurred, been waived or are futile. Specifically, a requestor need not await the outcome of any request the City of Houston may have made for an opinion from the Texas Attorney General. *See Kallinen v. City of Houston*, 462 S.W.3d 25, 28 (Tex. 2015) (per curiam); *Harris County Appraisal District v. Integrity Title Co, LLC*, 483 S.W.3d 62 (Tex. App. – Houston [1st Dist.] 2015, orig. proceeding). Rather, a requestor is entitled to file a Petition for Writ of Mandamus at any time. *Id.*

C.
BACKGROUND FACTS

The City of Houston Gets A Million Dollars from EcoHub's Ideas.

5. EcoHub has obtained multiple patents on a novel way to recycle all trash from a municipality; the idea would eliminate 90% of the waste presently going to landfills, save the municipality money on its recycling efforts, copiously reduce greenhouse gas emissions, and in the right case, return to the municipality money (in the

form of revenue sharing) from the sale of the products that EcoHub manufactured from the trash it collected from the municipality. Under the administration of Mayor Annise Parker, the City of Houston used EcoHub's business model (known as "One Bin for All" or "One Bin") as the basis for its application for a grant under Michael Bloomberg's Mayors Challenge Grant Program. Out of 305 applicants, the City of Houston was one of six winners, five of whom were given \$1,000,000 to make their idea a reality.¹

Mayor Turner Thwarts EcoHub's Chances

6. Under Mayor Parker, EcoHub participated in what is believed to be the longest RFP process in Houston history, and was chosen as the winner by a distinguished panel of community leaders. Thereafter, the City and EcoHub spent years finalizing the contract that would make "One Bin for All" a reality. However, despite well-documented support for EcoHub's One Bin proposal from Mayor Turner's top aides and advisers (and, arguably at one point, even Mayor Turner himself), Mayor Turner has declined to continue with the One Bin proposal. Mayor Turner's decision comes in spite of: (a) the receipt of the \$1 million in grant funds the City received under Bloomberg Mayors Challenge based exclusively on the City's representation that it would implement One Bin; (b) the \$650 million in bond financing EcoHub believes it would have obtained from the Gulf Coast Industrial Development Authority to build EcoHub's state of the art facility in Houston; (c) a \$70 million grant application that EcoHub, with the assistance

¹ <https://www.bloomberg.org/press/releases/bloomberg-philanthropies-announces-mayors-challenge-winners-providence-chicago-houston-philadelphia-and-santa-monica/>.

of a group called Circular Economy Remanufacturing Institute and 43 universities, submitted to the U.S. Department of Energy that hinged entirely on EcoHub's future in Houston; (d) the clear fiscal benefit that the citizens of the City of Houston would enjoy from the savings and job stimulus that EcoHub would bring to the City; and (e) the undisputable environmental benefits the area would enjoy for generations to come.

Mayor Turner Recommends New Recycling Contract That Is Expected to Cost the City more than 350% More than EcoHub's Proposal – and the City Council Rightly Balks

7. Instead of moving forward with EcoHub's "One Bin" or "closed loop" system – expected to be a net *revenue generator* for the City -- the City instead issued in October 2016 a new Request for Proposal for recycling services. This time, however, the new Request for Proposal was drafted in such a way that EcoHub would not qualify as a bidder, effectively destroying EcoHub's chances in Houston. Undaunted by what appeared to EcoHub to be an unfair process, EcoHub engaged Dolcefino Consulting to conduct research into the City's Solid Waste Department and events surrounding recycling contracts. Starting January 6, 2017, EcoHub, through its agent Dolcefino Consulting, requested production of public records from the City pursuant to the Texas Public Information Act, hoping to learn more about why Mayor Turner preferred a costlier, but clearly less effective, recycling program as compared to One Bin – a program that some of the same city officials in Turner's administration had studied and vetted while serving under Mayor Parker. Rather than simply releasing the documents

that would corroborate what Mayor Turner claims is a better deal for the residents of Houston, the City has instead refused to produce the requested public records, hence the need for this Petition and the hope for independent oversight.

8. Notwithstanding Dolcefino's dogged pursuit of public records to shed light on the events behind the scenes, Mayor Turner forged ahead, announcing on July 1, 2017 that FCC, a Spanish company, had won the October 2016 Request for Proposal. At a press conference, Turner called the proposal "a good deal" for the City, and stated his intent to seek city council approval to enter into the 15-year, \$48 million contract. From all appearances, the FCC proposal would cost the City nearly 350% more than the bid that EcoHub submitted (and won) during Mayor Parker's administration, on processing costs alone. In total, EcoHub's offer would have provided the citizens of Houston with savings of approximately \$25 million per year in cost savings from cheaper processing as well as the consolidation of garbage truck collection routes from 3 routes to one route.

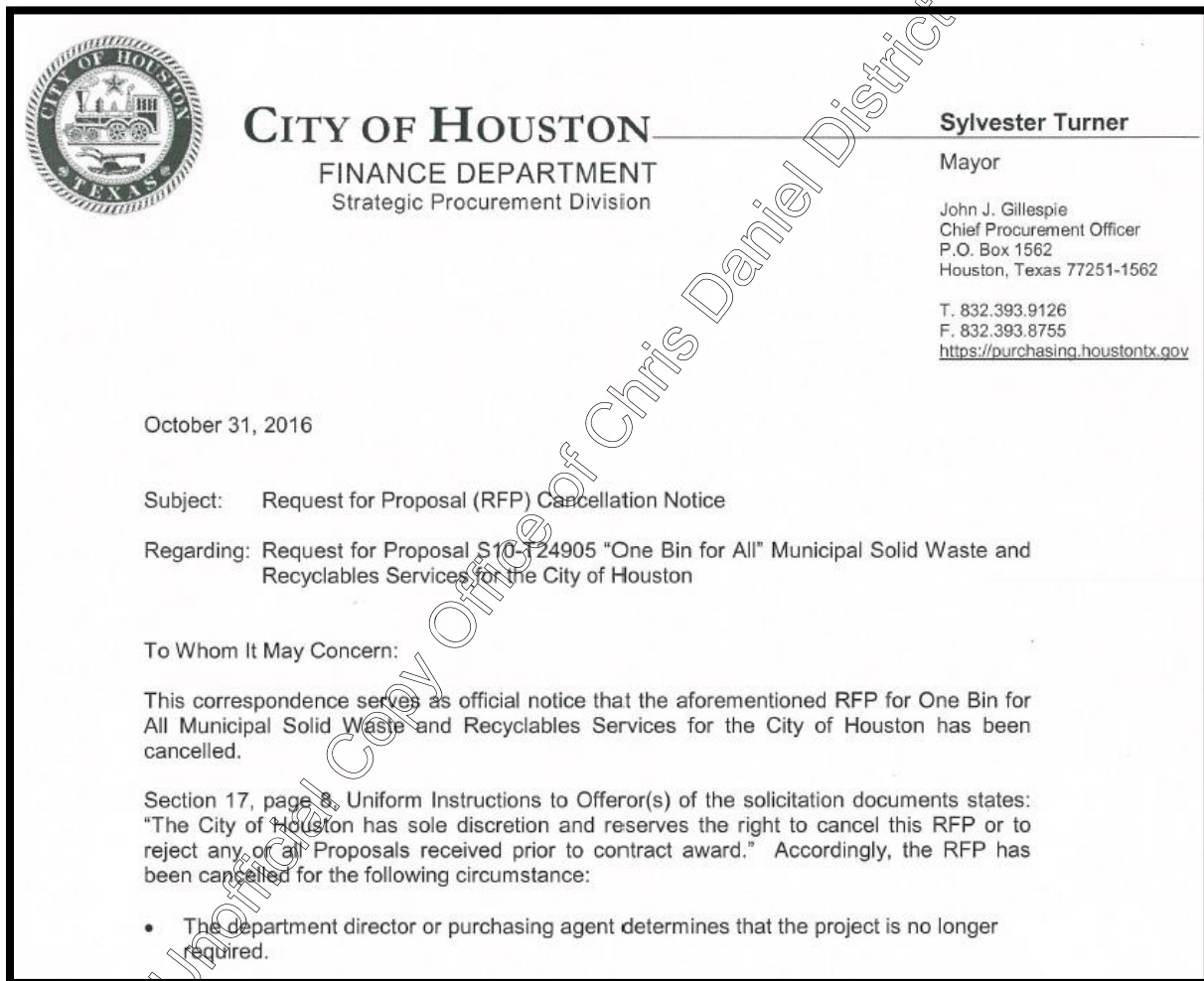
9. Because Mayor Turner's decision seemed detrimental to the City, EcoHub and Dolcefino continued to question why the City would seek to continue a "single stream" recycling program that would cost the city millions of dollars, and would likely lead to the imposition of a "garbage tax," especially when EcoHub's system was essentially costless to the City. EcoHub's inquiries were further fueled by the fact that the cost for a "single stream" recycling program would continue to escalate over the life of the 15-year recycling deal, since the major market for products manufactured from the

world's "single stream" recycling programs would materially vanish by January 1, 2018 due to China's recently announced intent to ban those imports. Even after being made aware of these facts, Mayor Turner still supported FCC as the winning bidder, and undaunted by reality and common sense, demanded that City Council vote on the matter by July 19, 2017.

10. Mayor Turner's plans took an abrupt detour during a city council hearing on July 18, 2017, however, where several council members raised substantial questions about the proposal Turner favored – many of which were the same questions EcoHub had been asking. Two council members stated that the garbage proposal Mayor Turner favored "doesn't smell right." Yet another claimed that Mayor Turner's analysis "was flawed" and "doesn't make sense," and still another noted his view that "it appears that we are keeping people in the dark instead of answering their questions."² Another notable discrepancy uncovered during the hearing was that Mayor Turner's office allegedly refused to share with council the details of the proposals upon which Turner was demanding a council vote unless the council member signed a confidentiality agreement. Presumably sensing defeat, or at least strong opposition to his proposal, Mayor Turner pulled the recycling contract vote from the City Council's July 19, 2017 voting agenda where it – like EcoHub's TPIA requests – remains in limbo.

² See <http://abc13.com/news/council-members-lets-start-over-on-recycling-contract/2230554/> and the video at <https://www.facebook.com/DolcefinoCommunicationsLlc/videos/1527978817259888/>.

11. Although the City has managed to thwart a good portion of EcoHub's investigation, some of what EcoHub has obtained raises greater suspicion about the behind the scenes movements at the City. For instance, EcoHub only recently learned of the existence of an October 31, 2016 document that purports to be the formal cancellation of the "One Bin for All" Request for Proposal, which was numbered S10-T24905:



[Exhibit 1, October 31, 2016 Cancellation]. On its face, the document is peculiar. First of all, it is addressed to "To Whom It May Concern" as opposed to EcoHub, which is

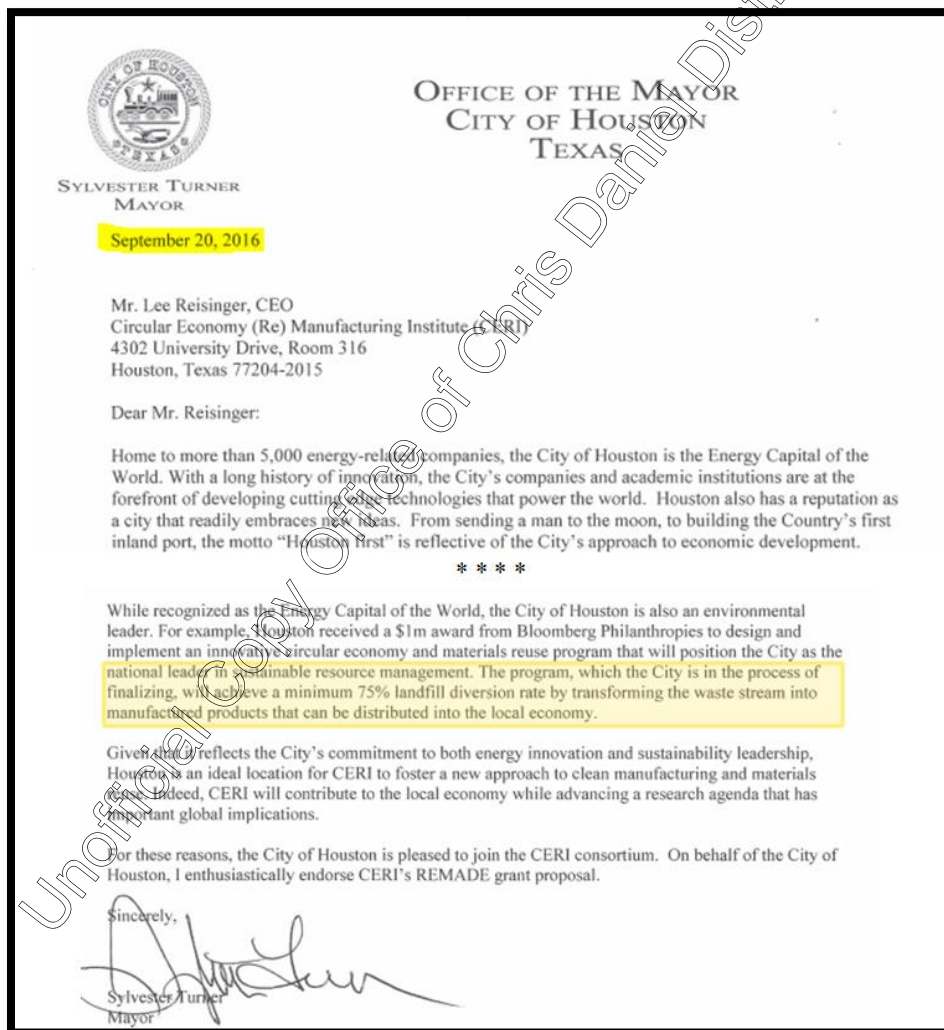
strange given that EcoHub was the only winning bidder for S10-T24905 and, presumably, would be the only party to whom the notice should have been sent. But, second, and perhaps even more peculiar, is the fact that EcoHub **never received it**, at least not until Spring 2017, when EcoHub obtained the document through one of its TPIA requests. And third, the October 31, 2016 date of the Notice seems curiously out of place, since Harry Hayes, the City's solid waste director, testified in front of the Houston City Council during the July 18, 2017 hearing that Mayor Turner decided to go with single stream recycling *in February of 2016*.³ If Mayor Turner had, in fact, decided by February 2016 to go with the "single stream" program (which, by definition, means that

³ For some unexplained reason, Hayes strongly oppose EcoHub's recycling plan in favor of proposals from the large waste companies. EcoHub uses the word "unexplained" because Hayes refused to speak to Channel 13's Ted Oberg on camera when asked why the One Bin deal fell apart. Instead, Hayes turned his back on Mr. Oberg and hurriedly departed from the scene:



[http://abc13.com/news/city-spent-\\$1m-but-has-little-to-show-for-recycling-proposal/2164463/](http://abc13.com/news/city-spent-$1m-but-has-little-to-show-for-recycling-proposal/2164463/).

he was not going with EcoHub's One Bin initiative), then why did the City earnestly continue contract negotiations with EcoHub through September 2016? And why, then, did Mayor Turner sign a letter dated September 20, 2016 supporting EcoHub's One Bin initiative as the centerpiece of a proposed \$70 million grant from the Department of Energy while claiming that the City was finalizing the contract for what is clearly EcoHub's One Bin program?



[Exhibit 2, September 2016 Letter]. And, finally, if the City is dumping One Bin, then

what happened to the \$1,000,000 the City of Houston received specifically to fund the birth of the One Bin program? Those questions remain unanswered.⁴

12. In the words of Houston City Council members David Robinson and Dave Martin, something about Mayor Turner's favored garbage deal "doesn't smell right." EcoHub agrees, and believes that improper tactics by the largest trash companies in the world served as the proverbial nail in the coffin of a revolutionary idea that would clearly benefit the City of Houston. While it might be politically convenient for Mayor Turner to dismiss EcoHub's concerns as mere conspiracy theories from a disgruntled vendor, a November 2016 article in the Houston Chronicle contained a telling quote from James C. Fish, Jr., the newly-appointed CEO of Houston-based Waste Management, lending

⁴ EcoHub is not the only one asking questions. There has been copious media and editorial coverage of the issues surrounding the City's conduct with EcoHub and its recycling program, raising questions that EcoHub believes have not been sufficiently answered by Mayor Turner and others working under him:

- [http://abc13.com/news/city-spent-\\$1m-but-has-little-to-show-for-recycling-proposal/2164463/](http://abc13.com/news/city-spent-$1m-but-has-little-to-show-for-recycling-proposal/2164463/)
- <http://abc13.com/news/mayor-defends-actions-on-city-recycling-contracts/2185918/>
- <https://www.click2houston.com/news/houston-based-recycling-company-claims-turner-renege-d-on-deal>
- <http://www.khou.com/news/local/city-of-houstons-recycling-deal-sparks-debate/454477950>
- <http://www.houstonpress.com/news/what-happened-to-EcoHub-and-houstons-one-bin-for-all-recycling-plan-9601564>
- <http://www.houstonchronicle.com/local/gray-matters/article/One-Bin-for-All-is-dead-So-how-should-Houston-11304956.php>

EcoHub recommends the Court review this coverage for a better understanding of the issues at hand.

credence to Ecohub's belief that EcoHub has the waste companies looking over their shoulders:

Waste Management's new CEO, James C. Fish Jr., wants to kick up the technology of trash collection. The Houston-based company has already increased route efficiencies and boosted online services, but Fish wants to further explore augmented reality for technicians and innovation to replace landfills.

"If we don't keep up with technology, there's always a risk that somebody develops a disruptive technology that upsets our business model," Fish said.

<http://www.houstonchronicle.com/business/article/Technological-flash-could-help-pick-up-trash-10609700.php>. Given the timing of Fish's statement, EcoHub certainly appears to be the "disruptor" about which Fish is clearly concerned. These facts should lead any reasonable person to wonder whether Mayor Turner (or those serving under him) have caved under the weight of improper influence by those who stand to financially benefit the most from the status quo. EcoHub and the residents of Houston deserve to know the answer.

EcoHub Begins a More In Depth Investigation

13. To better understand exactly what happened, EcoHub began sending requests under the Texas Public Information Act. EcoHub's first request dated January 6, 2017 sought disclosure of public records from the City – specifically, communications between various city officials regarding Mayor Turner's decision to discontinue the One Bin recycling proposal which had been painstakingly negotiated for years between the City and EcoHub. [Exhibit 3, January 6, 2017 TPIA Requests from Dolcefino

Consulting to City of Houston, at pp. 1-2]. The City did not challenge certain requests, but has still failed to produce all of the records in response to those requests. For example, EcoHub sought phone records for various city officials, including Solid Waste Director Harry Hayes, from January 1, 2015 to January 6, 2017 – the date of the request. [Exhibit 3, Request No. 1]. The City produced some documents, but missing from the City's production are records for the time periods of February 2015, December 2015, June 2016, November 2016 and December 2016.

14. As to the remaining portion of EcoHub's January 6, 2017 request, the City withheld certain records on the basis of three specific exemptions: (a) the anticipation of litigation exemption found in TEX. GOV'T CODE ANN. § 552.103; (b) the attorney client privilege found in TEX. GOV'T CODE ANN. § 552.104; and the (c) the unfair bidding advantage exemption under TEX. GOV'T CODE ANN. § 552.107. [Exhibit 4, January 30, 2017 Letter to Texas Attorney General Ken Paxton]. The City then compiled what it claimed was a "representative sample" of the "voluminous" responsive documents it believed were exempt from disclosure, and sought an opinion from the Texas Attorney General (the "AG") under TEX. GOV'T CODE ANN. § 552.103, 552.104 and 552.107 as to whether the City could lawfully withhold from disclosure the "representative sample" the City selected, and the documents the City claimed were just like them. By letter dated March 30, 2017, the AG's office rendered its opinion. [Exhibit 5, March 30, 2017 Letter from AG Ken Paxton]. In it, the AG's office first noted that it assumed, without actually

determining, that the “representative sample” sent by the City was, in fact, “truly representative.” [Exhibit 5, at p. 2, n. 2]. Next, the AG’s office agreed with the City that the records the City cherry-picked as its “representative sample” were exempt from disclosure under TEX. GOV’T CODE ANN. § 552.104(a) due to a “competitive bidding situation.” [Exhibit 5, at p. 2]. Finally, the AG concluded that certain records from the “representative sample” the City marked as attorney client privilege were, in fact, exempt from disclosure under the attorney client privilege exemption found in TEX. GOV’T CODE ANN. § 552.107. [Exhibit 5, at p. 3]. There was no ruling on the “anticipation of litigation” exemption. [Id.]. Because the AG’s TPIA opinions are not controlling upon the Court, *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010), EcoHub requests the Court to conduct an *in camera* inspection under TEX. GOV’T CODE ANN. § 552.3221 to ensure that *all* responsive, but withheld, records actually qualify for the claimed exemptions – not just the ones the City cherry-picked for its own purposes.

The March 21, 2017 Request

15. Even though the TPIA requires governmental bodies to “promptly produce public information” “within a reasonable time, without delay,” TEX. GOV’T CODE ANN. §552.221(a), the City appears to be derelict in responding to additional TPIA requests. For instance, on March 21, 2017, EcoHub requested under the TPIA the production of, among other things, “copies of any contracts with Adroit Project Advisors LLC or Keith Edgar.” [Exhibit 6, March 21, 2017 TPIA Request]. The City again sought an AG

Opinion, and the AG's office ruled against the City in a June 28, 2017 opinion. [Exhibit 7, July 5, 2017 Letter from City]. Via letter dated July 5, 2017, the City's Legal Department requested the Mayor's office to release the information, but certain responsive items remain unproduced (specifically, Edgar and Adroit's contracts with the City of Houston). EcoHub requests an Order from the Court that these records be expeditiously produced.

The June 21, 2017 Request

16. On June 21, 2017, EcoHub sought additional public records from the City. [Exhibit 8, June 21, 2017 TPIA Request]. Specifically, EcoHub sought the following materials:

1. Documents detailing all e-mail communications between Sylvester Turner and any representative of Waste Management and Republic Services between January 1, 2015 and October 14, 2016.
2. Documents detailing all e-mail communications between any member of the Mayor's staff and any representative of Waste Management and Republic Services between January 1, 2015 and October 14, 2016.
3. Documents detailing the names of members of the evaluation committee on any recycling contracts for the City of Houston between January 1, 2015 and October 14, 2016, along with all evaluations provided by said members.
4. E-mails sent or received by all members of any evaluation committee for Republic or Waste Management between January 1, 2015 and October 14, 2016 relating to garbage collection, processing, or recycling.
5. All e-mails sent or received by Harry Hayes relating to Republic or Waste Management between January 1, 2015 and October 14, 2016, including but not limited to e-mails sent by Sylvester Turner, Andy Icken and any employee or lobbyist working for Waste Management or Republic.
6. Documents detailing any contract between the City of Houston and Waste Management in which no outside bids were received between January 1, 2014 and October 14, 2016.
7. All e-mails sent or received by Steve Francis between January 1, 2014 and October 14, 2016.

[**Exhibit 8**, at pp. 1-2]. On July 19, 2017, the City responded, but produced a paltry 20 pages – 8 pages of the same email thread, and 11 pages of press releases which were long ago made public. As for the rest of the requests, the City withheld responsive items and instead sought yet another AG Opinion through a letter dated July 13, 2017. [**Exhibit 9**, July 17, 2017 Letter Requesting AG Opinion]. Once again, the City gathered its allegedly “representative sample” of documents and sent those to the AG, claiming that the representative sample, and the “voluminous” documents the City claimed the sample represented, were exempt from disclosure under: (a) the attorney client privilege found in TEX. GOV’T CODE ANN. § 552.104; (b) the unfair bidding advantage exemption under TEX. GOV’T CODE ANN. § 552.107; and (c) the interagency or intra-agency memorandum or letter exception found in TEX. GOV’T CODE ANN. § 552.111. [**Exhibit 9**, July 17, 2017 Letter Requesting AG Opinion].

17. Since the AG’s TPIA opinions are not controlling upon the Court, EcoHub requests the Court to conduct an *in camera* inspection under TEX. GOV’T CODE ANN. § 552.3221 to ensure that *all* responsive (but withheld) records – not just the allegedly “representative sample” – qualify for the claimed exemptions.

The July 19, 2017 TPIA Request

18. On July 19, 2017, EcoHub sought additional public records from the City. [**Exhibit 10**, July 19, 2017 Email from Dolcefino Consulting to City]. Specifically, EcoHub sought public records supporting Mayor Turner’s choice of FCC for the

recycling contract with the City of Houston. [*Id.*]. On July 27, 2017, the City responded and, once again, refused to release any information, instead relying upon the AG's prior ruling that certain documents were exempt from disclosure under TEX. GOV'T CODE ANN. §552.104. [**Exhibit 11**, July 27, 2017 Letter from City of Houston].

19. EcoHub believes the AG's ruling to have been legally incorrect or, at a minimum, incomplete (since it relied upon an allegedly representative sample of documents the City cherry-picked). Thus, EcoHub requests the Court to conduct an *in camera* inspection of *all* records responsive to the July 19, 2017 TPIA request and determine if they do, in fact, qualify for the exemption set forth in TEX. GOV'T CODE ANN. § 552.104.

D.
RELIEF REQUESTED

COUNT 1
Writ of Mandamus

20. EcoHub repeats and re-alleges each and every allegation made in the previous paragraphs as if fully rewritten herein.

21. Because "the fundamental philosophy of the American constitutional form of representative government ...[is] that government is the servant and not the master of the people," the Texas Legislature has decreed that "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 ANN. § 552.001(a). Although the people of a democracy

have delegated to the government the authority to govern, that power must not be wielded in secrecy. As the Legislature has recognized, our public servants do not have “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 ANN. § 552.001(a). To ensure that the people of Texas “may retain control over the instruments they have created,” the Legislature passed the Public Information Act, which requires the Court to liberally construe those protections in favor of granting the public’s request for disclosure of public information.

22. To that end, EcoHub requests the Court to first conduct an *in camera* inspection of all responsive documents the City claims are exempt from disclosure – not just the cherry-picked, allegedly “representative samples” – to determine whether such documents really are exempt as the City claims. If the Court overrules any claimed exemption, then EcoHub requests an order that the City to produce, within 5 calendar days, any records the Court finds are not shielded by the claimed exemptions.

23. EcoHub also request the issuance of a Writ of Mandamus that orders the City to produce the responsive items for which the City has not raised an exemption from disclosure, but which the City has yet to produce. These include the materials identified in Paragraphs 13 and 15 above.

COUNT 2
Attorney’s Fees and Costs

24. EcoHub repeats and re-alleges each and every allegation made in the previous paragraphs as if fully rewritten herein.

25. Should EcoHub substantially prevail in this proceeding, EcoHub requests the Court to order the City to pay a sum of money representing reasonable attorney's fees and costs, as permitted by TEX. GOV'T CODE ANN. §552.323.

E.
PRAYER

EcoHub requests the Court to order the City of Houston to provide all responsive items to the Court for an immediate *in camera* inspection so that the Court can determine whether the City's invocation of the exemptions from disclosure is lawful. To the extent the Court determines that the City has wrongfully withheld responsive public records, EcoHub requests the Court to order the City of Houston to disclose those records forthwith, and to award reasonable attorney's fees and costs, as well as all other relief the Court believes EcoHub should have.

DATE: August 1, 2017

Respectfully submitted,

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