

CAUSE NO. 2018528740

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DOLCEFINO COMMUNICATIONS, LLC DBA  
DOLCEFINO CONSULTING,

PLAINTIFF,

VS.

TEXAS TECH UNIVERSITY AND DR. LAWRENCE  
SCHOVANEC, IN HIS OFFICIAL CAPACITY AS THE  
PRESIDENT OF TEXAS TECH UNIVERSITY,

DEFENDANTS.

IN THE DISTRICT COURT

99TH JUDICIAL DISTRICT

LUBBOCK COUNTY, TEXAS

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PLAINTIFF'S FIRST AMENDED PETITION

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Plaintiff Dolcefino Communications, LLC d/b/a Dolcefino Consulting, ("Dolcefino" or "Plaintiff") files this First Amended Petition against Defendant Texas Tech University ("Texas Tech," "TTU," or "Defendant") and its President and officer for public information Dr. Lawrence Schovanec, and would respectfully show the Court the following:

**I. DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 3 of the Texas Rules of Civil Procedure.

**II. PARTIES**

2. Plaintiff Dolcefino Consulting is a domestic limited liability company with its principal place of business at 3701 Kirby Drive, Suite 560, Houston, Texas 77098.

3. Defendant Texas Tech University is organized and existing pursuant to the laws of the State of Texas. Defendant has been served and has generally appeared.

4. Defendant Dr. Lawrence Schovanec, an individual, is the President of Texas Tech University and its chief administrative officer. Defendant is therefore TTU's "Officer for Public Information" under the Texas Public Information Act. Plaintiff has sued Dr. Schovanec solely in his official capacity as the President and Officer for Public Information for TTU. Dr. Schovanec may be served with process at the Office of the President, 150 Administration Building, Texas Tech University, 2500 Broadway, Lubbock, Texas 79409, or wherever he may be found.

### III. JURISDICTION AND VENUE

5. This is an action pursuant to Tex. Gov't Code § 552.321(a), which states that a requestor 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 refuses to supply information that the attorney general has determined is public information that is not excepted from disclosure.

6. This is also an action brought pursuant to Texas Civil Practice and Remedies Code Chapter 37. The Court has subject-matter jurisdiction over this dispute. Both parties are Texas residents. An active justiciable controversy exists between the parties. Plaintiff contends that TTU is a governmental body and demands that TTU respond to Plaintiff's TPIA requests. Plaintiff seeks declaratory relief regarding its rights, status, and legal relations in connection with Defendant. The Court has the power to

resolve the dispute because Plaintiff's action for declaratory relief is within the Court's general jurisdiction.

7. Venue is proper in Lubbock County, Texas, where a substantial part of the events giving rise to Plaintiff's cause of action occurred. Plaintiff directed correspondence to TTU in Lubbock County demanding that TTU produce certain categories of documents and information. That act of directing a demand in Lubbock County, a demand that gives rise to the controversy that Plaintiff seeks to have resolved by its declaratory judgment action, is sufficient to demonstrate venue. In addition, the relevant documents that Plaintiff requested are all located in Lubbock County, and performance of the requested tasks would take place in Lubbock County. Moreover, the nature of this action is to declare whether, as between the parties, TTU is a "governmental body" under the TPIA. Because TTU is located in Lubbock County, venue is mandatory in Lubbock County. Tex. Gov't Code § 552.321(b).

#### **IV. RULE 47(C) DISCLOSURE**

8. Pursuant to Rule 47(c) of the Texas Rules of Civil Procedure, Plaintiff seeks monetary relief over \$100,000 but not more than \$200,000 and non-monetary relief. The relief sought is within the jurisdiction of the Court.

#### **V. SUMMARY**

9. This case is about providing public access to information to ensure accountability of our government institutions. Texas Tech has flagrantly disregarded the law following its controversial termination of popular football coach, Mike Leach—it breached a contract, hid behind sovereign immunity, and now blatantly violates the

Texas Public Information Act by failing to produce the public records associated with the termination. This suit is to ensure that abuses of power do not go unchecked.

10. Texas Tech fired football coach Mike Leach one day before Texas Tech was obligated to make a \$2.4 million payment to him. In response, Coach Leach filed a lawsuit against Texas Tech seeking the money that he had earned pursuant to the contract. Texas Tech then hid behind sovereign immunity to avoid honoring the contract it agreed to with Coach Leach.

11. But what Texas Tech failed to account for were the obligations that are required of Texas Tech as a governmental body in Texas. In Texas, *all government records are presumed to be public*. This includes the documents held by Texas Tech relating to Coach Leach and Texas Tech's improper termination of him. There is no doubt that Texas Tech is in possession of information that directly relates to Coach Leach's improper firing and Tech's motive – as shown by emails, phone records, and documents relating to a so-called investigation about Coach Leach. And under Texas law, the public has a legal right to see these documents.

12. So, Wayne Dolcefino, an award-winning journalist and investigative professional, did what he had the legal right to do – he requested the documents relating to Coach Leach's firing. But Texas Tech does not want to play by the rules, and it is violating the Texas Public Information Act by failing to provide access to its records.

13. In short, Texas Tech has abused the powers entrusted to it as a governmental body, and now it wants to have its cake and eat it too. Texas Tech wants to reap the benefits of being a governmental body by hiding behind sovereign immunity so

that Coach Leach cannot sue it. But Texas Tech also wants to avoid the obligations of being a governmental body by refusing to produce the documents that it is required by law to produce. Because Texas Tech has refused to comply with the Texas Public Information Act, Dolcefino files this suit to compel production of the public documents.

## VI. FACTS

### A. TEXAS TECH FIRES COACH LEACH

14. Coach Leach was employed as Texas Tech's football coach from 1999 to 2009. Under Coach Leach's employment agreement signed in 2003, Texas Tech was required to make certain payments to him unless Leach was fired "for cause."

15. On December 31, 2009, Coach Leach was due approximately \$2.4 million pursuant to the 2003 employment contract. But the day before he was to complete his six-year contract and be paid this amount, Texas Tech fired Coach Leach. Texas Tech asserted that the termination was "for cause," claiming that it fired Coach Leach based on the unsupported—in fact, contradicted—complaints of one parent, Craig James, an ESPN sports commentator.

16. When Coach Leach was fired, there was an outcry among Texas Tech fans and alumni. The winningest football coach in the school's history had been fired after a sham investigation that disproved many of the claims made by Craig James in any event. Either the Texas Tech Board of Regents had kowtowed to threats that one parent would make a sensational, national news story, or the Board of Regents had hidden behind James' complaints as an excuse to fire Coach Leach.

17. One Texas Tech representative, Chairman Anders explained, “We were focused—focused on the backlash of public opinion that was coming our way.” But another representative, Chancellor Hance, emailed the Texas Tech president discouraging lesser disciplinary measures for Leach, stating “[we] don’t want to eliminate using [the allegations] to our advantage should we choose to terminate Leach.”

**B. COACH LEACH SUES TEXAS TECH, AND TEXAS TECH HIDES BEHIND SOVEREIGN IMMUNITY**

18. On January 8, 2010, Coach Leach sued Texas Tech, claiming Texas Tech had fired him without cause and had issued defamatory statements in an attempt to prevent Coach Leach from obtaining another head football coach position. Texas Tech, when forced to defend itself against its willful breach of Coach Leach’s contract, successfully played the “sovereign immunity” card to end the litigation.

19. In Texas, sovereign immunity is a tool that can be used by governmental entities to avoid lawsuits. The idea behind sovereign immunity is that the government cannot properly conduct the state’s business if it is busy being overly concerned about lawsuits. But Tech used it to defend itself against Coach Leach, despite the fact that Tech was undoubtedly acting in the business capacity of college football where its funds were coming from football tickets and concessions — not as a sovereign protecting its citizens.

20. When Texas Tech successfully asserted its immunity under Texas law, it foreclosed Coach Leach from proving the true reason he was fired or forcing Texas Tech to answer for its willful breach of Coach Leach’s employment contract.

### C. DOLCEFINO SENDS TPIA REQUESTS

21. In October of 2017, Wayne Dolcefino, through Dolcefino Consulting, began sending a series of requests under the Texas Public Information Act to Texas Tech University and the Texas Tech Athletic Fund.

22. Dolcefino is no stranger to the rights of Texans to access public information through the Texas Public Information Act. Wayne Dolcefino is an award-winning journalist, licensed private investigator, and president of Dolcefino Consulting, an investigative communications firm. During his 27-year television career, Dolcefino ran the 13 Undercover Unit, specializing in exposing waste and corruption, primarily in the use of government and charity funds. Mr. Dolcefino has won 30 Emmy Awards from the National Academy of Television Arts and Sciences and is the only journalist in the country that has won 3 medals from the prestigious Investigative Reporters and Editors Awards. One of these medals was a Freedom of Information Award relating to the Texas Public Information Act. Dolcefino won this award following an attempt by the Harris County Sheriff's Office to destroy 70,000 emails despite a pending records request submitted by Dolcefino. Dolcefino and KTRK TV filed suit, and a state district court judge ordered the production of all emails without any exceptions. For several years, Dolcefino was an advisor to the Freedom of Information Foundation of Texas.

23. On September 21, 2017, Wayne Dolcefino filed a series of requests under the Texas Public Information Act to Texas Tech University and the Texas Tech Athletic fund. Dolcefino withdrew the first request due to a recent change in the response procedures under the TPIA. Texas Government Code Section 552.261 now allows

governmental entities to treat all requests received on the same day as a single request for the purpose of calculating costs. This recent change allows governmental entities to lump the charges for multiple requests, making it impossible for the requestor to know what to narrow or clarify in order to reduce expenses. As such, when Texas Tech alleged the necessity of a document retrieval charge, it would have been impossible to know which request allegedly necessitated the charge. The only way to determine the cost of each request was to separate each request, which Dolcefino subsequently did.

24. Over the course of the following months, Dolcefino sent individual record requests, including requests for:

- i. Documents surrounding the termination of Coach Leach;
- ii. Documents evidencing the conduct and communications of members of the Board of Regents at Texas Tech;
- iii. Communications involving Kent Hance and Kelly Overley; and
- iv. Financial records detailing payment to Kent Hance after his original departure as Chancellor of Texas Tech.

#### **D. TEXAS TECH FAILS TO PROPERLY RESPOND**

25. While Texas Tech previously took advantage of one of the *benefits* of being a governmental body by claiming sovereign immunity, it is now refusing to comply with the *obligations* that exist to governmental bodies.

26. After receiving the TPIA requests, Texas Tech wholly failed to fulfill its obligations under the statute both by failing to properly respond to the requests and by attempting to overcharge Dolcefino to access the records.



27. As detailed below, Texas Tech completely ignored some of the requests. On others, Texas Tech only partially responded. And on others, Texas Tech has sought an opinion from the attorney general, seeking to avoid its obligation to respond.

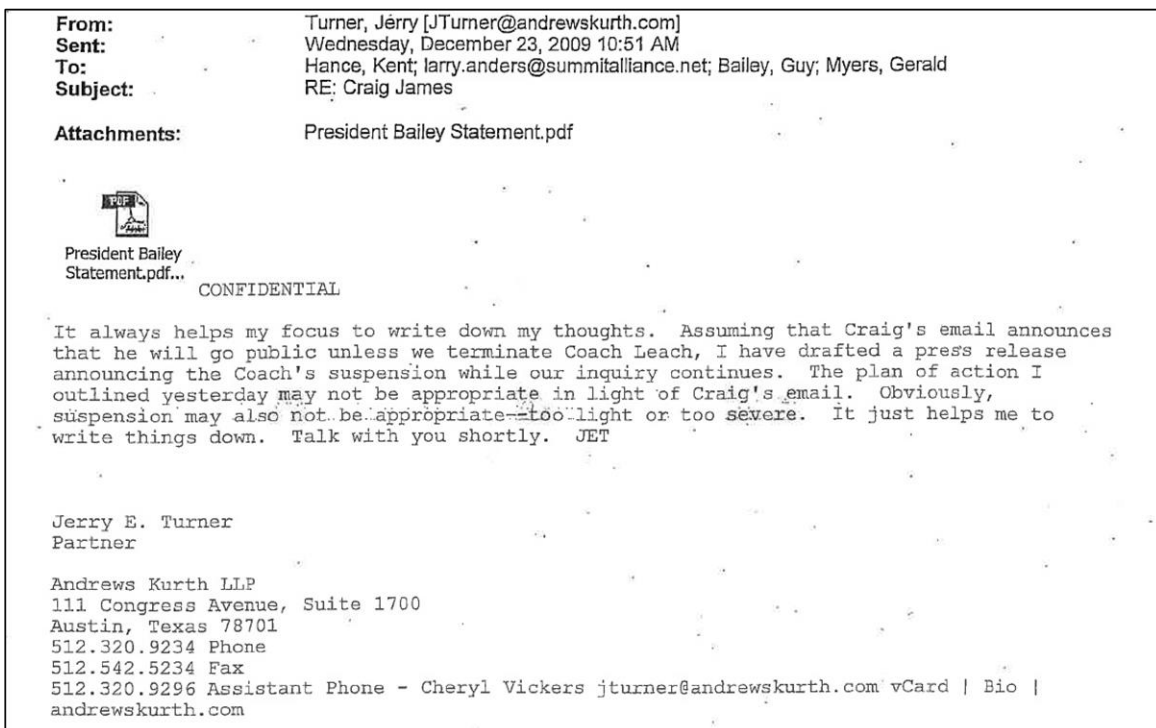
28. In response to the requests for records relating to the Leach investigation, Texas Tech produced records that were incomplete. Specifically, emails that are known to exist because they were previously produced by Texas Tech in earlier litigation were not produced in response to the open records requests. Further, upon information and belief, Texas Tech identified at least 1,785 pages worth of documentation relevant to Coach Leach's termination, yet they have only produced 312 pages of documents.

29. Not only did Texas Tech fail to respond and improperly respond, but it also sent Dolcefino a bill for exponential, unauthorized and improper charges for Dolcefino's requests. The responses received from Texas Tech evidenced an incorrect position of the Texas Public Information Act on the part of the university. The initial response received by Dolcefino from Texas Tech included estimates for the cost of production and requests for Attorney General Open Records Decisions in the same document. These documents listed an estimate for the cost of production, but did not indicate that any documents would be released. The estimate for the cost of production totaled \$18,422.50. This total included a \$17,000 "Document Retrieval Charge." But pursuant to Texas Administrative Code Section 70.3(g), a charge of that nature is reserved for the retrieval of documents that are stored offsite or are archived. Here, Dolcefino had sought only emails stored in the computer systems of Texas Tech. Additionally, Dolcefino had attempted to aid Texas Tech in narrowing the request by seeking no mass emails between the named individuals.

Nonetheless, to date, Dolcefino Consulting has received only incomplete production of the requested emails.

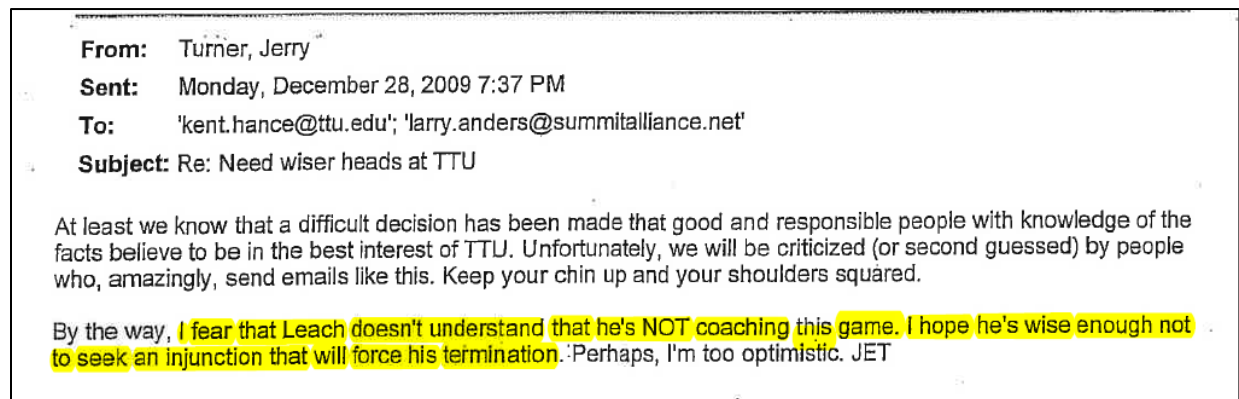
**E. THE DOCUMENTS TEXAS TECH DID PRODUCE ONLY RAISE MORE QUESTIONS.**

30. Some emails were produced, including the following, indicating that the president of Texas Tech did not even write his own news release to announce the firing of Coach Leach. Instead, it was Regent Jerry Turner who actually authored the release:



31. Other documents produced by Texas Tech raise serious questions about the truthfulness of the information that has been provided to the public regarding Leach's firing. The so-called "investigation" that the university promised to the students and the public now appears to be nothing more than a sham and a colossal rush to judgment to punish Coach Leach for unsubstantiated allegations. The firing appears to be a retaliation

for Coach Leach's efforts to seek a temporary restraining order to ensure he could coach the team in the Alamo Bowl.



32. The emails further suggest that the majority of the Board of Regents was not even notified about the allegations of misconduct that had allegedly led to the firing of Leach “for cause.” Other emails demonstrate that the overwhelming response to the firing of Coach Leach was negative. And while comments supportive of Coach Leach’s termination were forwarded from Chancellor Hance to the Board of Regents, negative comments from alumni about same were withheld.

33. Most disturbing, however, is the email trail that documents efforts by top officials at Texas Tech and other interested parties to manipulate affidavits of Texas Tech employees after the employees made public statements to the Dallas Morning News (“DMN”).

34. Adam James’ version of events is what Texas Tech relied on to terminate Leach’s employment on December 30, 2009. Kate Hairopoulos, a reporter for the DMN, published an article containing statements from Head Athletic Trainer Steve Pincock, Director of Sports Medicine for Football Mark Chisum, and Team Physician Michael Phy,

that *contradicted* Adam James' version of the events. But internal communications at Texas Tech show that Spaeth Communications, the public relations firm hired by Craig James (the father of Adam James), worked with Texas Tech representatives to get Steve Pincock and Michael Phy to change their stories. Steve Pincock and Michael Phy then executed affidavits containing changes suggested by Merrie Spaeth at Spaeth Communications. Worried about the timing of the affidavits, Texas Tech officials sent internal emails making it clear that the affidavits needed to be back-dated to ensure that it would not be obvious that the witnesses had been coerced into changing their statements to benefit the school.

**From:** Hance, Kent  
**To:** Strebeck, Jordan; Post, Sally; Harmon, Casey L  
**Sent:** Sat Jan 02 05:40:17 2010  
**Subject:** Re: Pincock's affidavit

You are right. The ans is that they gave us the statement on such and such dates. We did not get it sworn to at the time because we did not realize we were dealing with such manipalors.

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**From:** Strebeck, Jordan  
**To:** Post, Sally; Otice Green  
**Cc:** Hance, Kent  
**Sent:** Sat Jan 02 01:50:59 2010  
**Subject:** RE: Pincock's affidavit

IF either of these statements were given (not sworn to, but given) before Leach was fired, that is INCREDIBLY relevant to our case. If that's the case, we need to make sure and emphasize that in order to help stave off accusations of us pressuring them into making statements, etc. That's what Leach will try to claim.

I'm sure that's already been discussed (and if so, please accept my apologies), but I just wanted to throw that out there in case everyone hadn't had a chance to talk about it yet with the hectic nature of things.

Thoughts?

JS

#### F. THE PUBLIC HAS A LEGAL RIGHT TO SEE THE DOCUMENTS.

35. Students, parents, donors, and taxpayers have a fundamental right to see the internal documentation requested by Dolcefino, to know about the interviews conducted, to learn whether key employees were interviewed, to see whether sworn

testimony was altered, and to see the notes taken during the so-called “investigation” of Leach. While Texas Tech now admits, for the first time, that this completed and thorough investigation never occurred, its refusal to release documents constitutes an attempt to cover up the true railroad job by Texas Tech against Coach Leach.

36. Additionally, the public has a right to know what Texas Tech did with the \$2.4 million owed to Mike Leach.

37. Dolcefino now brings this suit for mandamus and declaratory relief.

### VII. THE REQUESTS

38. The following chart identifies each request which is now the subject of this lawsuit and assigns each one a unique identifying number for purposes of this litigation and indicates the status of any decision issued by the Attorney General regarding the requests:

<b>Id. No.</b>	<b>Date</b>	<b>Request</b>	<b>ORD Req.?</b>	<b>ORD Issued?</b>	<b>TTU’s Resp.</b>
R-1	09/21/2017	Detailed phone records of all members of the Texas Tech University Board of Regents between January 1, 2016 and the present. Responsive documents should include any device, including a personal cell phone on which university business is conducted. You may redact personal phone calls.	Request for ORD was withdrawn by TTU	N/A	
R-2	09/21/2017	Detailed phone records of Chancellor Emeritus Kent R. Hance between January 1, 2014 and the present. Responsive documents should include any device, including a personal cell phone on which university business is conducted. You may redact personal phone calls.	Request for ORD was withdrawn by TTU	N/A	
R-3	09/21/2017	Documents detailing any recusal or abstention by any member of the Texas Tech University Board of Regents between January 1, 2015 and the present. These documents should include any affidavits, or documents submitted explaining any potential conflict of interest as required by state.	Request for ORD was withdrawn by TTU	N/A	
R-4	09/21/2017	Copies of resumes for each member of the Texas Tech University Board of Regents.	Request for ORD was withdrawn by TTU	N/A	

<b>Id. No.</b>	<b>Date</b>	<b>Request</b>	<b>ORD Req.?</b>	<b>ORD Issued?</b>	<b>TTU's Resp.</b>
R-5	09/21/2017	A spreadsheet which details all payments made to any law firm between January 1, 2014 and the present. This spreadsheet should include separate accounting of payments by department.	Request for ORD was withdrawn by TTU	N/A	
R-6	10/09/2017	A copy of any completed investigation into the alleged mistreatment of Adam James by Mike Leach. You may redact information made confidential under state law.	No	N/A	No Correspondence in files.
R-7	10/10/2017	Copies of all sent emails between January 1, 2016 and the present, from Texas Tech University Board of Regents member L. Frederick Francis which relate to University business. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public.	Request for ORD was withdrawn by TTU	N/A	No production, only correspondence between TTU & AG. Latest Correspondence is TEXAS TECH LTR TO AG 10-31-2017.pdf. TTU states the AG's office has not assigned an ID number to this request.
R-8	10/11/2017	Documents detailing the General Ledger Funds and Expenses of the Texas Tech Football Team between January 1, 2015 and the present.	Request for ORD was withdrawn by TTU	N/A	Response of "no such document exists" was received 10-25-2017
R-9	10/12/2017	Copies of all sent emails between January 1, 2016 and the present, from Texas Tech University Board of Regents member Tim Lancaster which relate to University business. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public.	Request for ORD was withdrawn by TTU	N/A	All Correspondence related to this request, estimate, letter to requestor, and letter to AG are dated Oct 26, 2017.
R-10	10/12/2017	Copies of all email communications between Chancellor Robert Duncan and Texas Tech University Board of Regents member Tim Lancaster between January 1, 2016 and the present. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public.	Request for ORD was withdrawn by TTU	N/A	No production, only correspondence between TTU & AG.
R-11	10/13/2017	Copies of all sent emails between January 1, 2016 and the present, from Texas Tech University Board of Regents member John Esparza which relate to University business. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public.	Request for ORD was withdrawn by TTU	N/A	No production, only correspondence between TTU & AG.
R-12	10/13/2017	Copies of all email communications between Chancellor Robert Duncan and Texas Tech University Board of Regents member John Esparza between January 1, 2016 and the present. You may redact information made confidential under state law, and information which would be considered legal advice.	Request for ORD was withdrawn by TTU	N/A	No production, only correspondence between TTU & AG.

<b>Id. No.</b>	<b>Date</b>	<b>Request</b>	<b>ORD Req.?</b>	<b>ORD Issued?</b>	<b>TTU's Resp.</b>
		You may withhold any mass mailings readily available to the public.			
R-13	10/16/2017	Copies of all sent emails between January 1, 2016 and the present, from Texas Tech University Board of Regents member Mickey L. Long which relate to University business. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public.	Request for ORD was withdrawn by TTU	N/A	
R-14	10/16/2017	Copies of all email communications between Chancellor Robert Duncan and Texas Tech University Board of Regents member Mickey L. Long between January 1, 2016 and the present. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public. Digital production is preferred.	Request for ORD was withdrawn by TTU	N/A	All Correspondence related to this request, estimate, letter to requestor, and letter to AG are dated Oct 30, 2017.
R-15	10/17/2017	Copies of all sent emails between January 1, 2016 and the present, from Texas Tech University Board of Regents member Ronnie Hammonds which relate to University business. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public.	Request for ORD was withdrawn by TTU	N/A	All Correspondence related to this request, estimate, letter to requestor, and letter to AG are dated Oct 31, 2017.
R-16	10/17/2017	Copies of all email communications between Chancellor Robert Duncan and Texas Tech University Board of Regents member Ronnie Hammonds between January 1, 2016 and the present. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public.	Request for ORD was withdrawn by TTU	N/A	
R-17	10/18/2017	Copies of all sent emails between January 1, 2016 and the present, from Texas Tech University Board of Regents member Christopher M. Huckabee which relate to University business. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public.	Request for ORD was withdrawn by TTU	N/A	
R-18	10/18/2017	Copies of all email communications between Chancellor Robert Duncan and Texas Tech University Board of Regents member Christopher M. Huckabee between January 1, 2016 and the present. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public.	Request for ORD was withdrawn by TTU	N/A	
R-19	10/19/2017	Copies of all sent emails between January 1, 2016 and the present, from Texas Tech University Board of Regents member J. Michael Lewis which relate to	Request for ORD was	N/A	

<b>Id. No.</b>	<b>Date</b>	<b>Request</b>	<b>ORD Req.?</b>	<b>ORD Issued?</b>	<b>TTU's Resp.</b>
		University business. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public.	withdrawn by TTU		
R-20	10/19/2017	Copies of all email communications between Chancellor Robert Duncan and Texas Tech University Board of Regents member J. Michael Lewis between January 1, 2016 and the present. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public.	Request for ORD was withdrawn by TTU	N/A	
R-21	10/20/2017	Copies of all sent emails between January 1, 2016 and the present, from Texas Tech University Board of Regents member John Steinmetz which relate to University business. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public.	Request for ORD was withdrawn by TTU	N/A	Latest Correspondence is Signed Updated estimate to Requestor.pdf dated November 6, 2017. The original estimate dated Nov 2 was \$172.50 and the Nov 6 estimate includes \$300.00 more in "Document Retrieval Charges." Have we paid for this production?
R-22	10/20/2017	Copies of all email communications between Chancellor Robert Duncan and Texas Tech University Board of Regents member John Steinmetz between January 1, 2016 and the present. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public.	Request for ORD was withdrawn by TTU	N/A	No production, only correspondence between TTU & AG. Latest Correspondence is 11-10-17 TEXAS TECH CORR TO AG.pdf. TTU states the AG's office has not assigned an ID number to this request.
R-23	10/22/2017	Copies of all sent emails between January 1, 2016 and the present, from Texas Tech University Board of Regents member John Walker which relate to University business. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public.	Request for ORD was withdrawn by TTU	N/A	No production, only correspondence between TTU & AG. Latest Correspondence is 11-13-2017 LTR TO AG.pdf. TTU states the AG's office has not assigned an ID number to this request.
R-24	10/22/2017	Copies of all email communications between Chancellor Robert Duncan and Texas Tech University Board of Regents member John Walker between January 1, 2016 and the present. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public.	Request for ORD was withdrawn by TTU	N/A	No production, only correspondence between TTU & AG. Latest Correspondence is 11-13-2017 LTR TO AG.pdf. TTU states the AG's office has not assigned an ID number to this request.
R-25	10/25/2017	Copies of all email communications between Chancellor Robert Duncan and Texas Tech University Board of Regents member L. Frederick Francis between January 1, 2016 and the present. You may redact information made confidential under state law, and information which would be considered legal	Request for ORD was withdrawn by TTU	N/A	



<b>Id. No.</b>	<b>Date</b>	<b>Request</b>	<b>ORD Req.?</b>	<b>ORD Issued?</b>	<b>TTU's Resp.</b>
		advice. You may withhold any mass mailings readily available to the public.			
R-26	10/26/2017	A digital spreadsheet detailing the total amount of legal fees Texas Tech paid to any law firm associated with the Mike Leach investigation and litigation. This spreadsheet should include names of said law firms involved in the investigation and litigation.	No	N/A	No Correspondence in files. 2 spreadsheets received as production on November 9, 2017 4:40 PM, McGinnis Lochridge and Kilgore.xlsx & Thompson Knight.xlsx. Mr. Wall's email states that all of the responsive documents are attached.
R-27	10/27/2017	Copies of any documents and/or notes obtained or made during the investigation of the alleged mistreatment of Adam James by Mike Leach or any other allegations against Mike Leach. You may redact information made confidential under state law.	Yes	Yes (OR201 8-03986)	No Correspondence in files. 2 spreadsheets received as production on November 9, 2017 4:40 PM, McGinnis Lochridge and Kilgore.xlsx & Thompson Knight.xlsx. Mr. Wall's email states that all of the responsive documents are attached.
R-28	10/27/2017	Emails sent or received by Chancellor Kent Hance relating to Mike Leach from September 1, 2009 to February 28, 2010. You may redact information made confidential under state law and information which would be considered legal advice.	Yes	Yes (OR201 8-03986)	
R-29	10/30/2017	Copies of all payments made by Texas Tech to Kent Hance since the date of his resignation.	No	N/A	No Correspondence in files. All responsive documents appear to be included.
R-30	11/06/2017	Copies of any email correspondence between Kelly Overly and Kent Hance for all time.	Yes	Yes (OR201 8-04298)	Latest Correspondence is production of 27 pages dated March 9, 2018. The cover letter says we have received all remaining withheld documents pursuant to AG Opinion 2018-03986, however it also says that we should have been produced between 467 and 494 pages. At best we received 337. We are missing as many as 157 pages. The original estimate was for 625 pages.
R-31	11/14/2017	Hance Post Resignation Contract	No	N/A	It appears we have received all documentation regarding this TPIA request.
R-32	11/30/2017	Digital copies of all publicly releasable documents including but not limited to any disciplinary action, internal investigation and or complaints filed against Kent Hance since January 1, 2014.	No	N/A	No Correspondence in files. All responsive documents appear to be included.
R-33	01/18/2017	PDF Copies of all emails between Kent Hance and Jodey Arrington between September 1, 2009 and March 1, 2010 related to Mike Leach, and/or "M/L", and/or any investigation regarding Adam James.	Yes	Yes (OR201 8-08255)	04/11/18 AG ruled for W/H for litigation. Previous Correspondence is Signed Brief-No Exhibits.pdf dated

<b>Id. No.</b>	<b>Date</b>	<b>Request</b>	<b>ORD Req.?</b>	<b>ORD Issued?</b>	<b>TTU's Resp.</b>
					February 8. TTU states the AG's office has not assigned an ID number to this request. Some production (Released Documents.pdf) was produced in the same email with TTU's letter to the AG's office.
R-34	1/31/2018	Digital production of all files saved in file:///G:/Communications\Leach referenced in Jordan Strebeck's sent email dated January 6, 2010, 1:10 pm (see enclosure).	No	N/A	Response dated 02-14-2018 states "The file path you have referenced in your request no longer exists, thus we have nothing responsive to your request."
R-35	4/5/2018	Copies of all sent emails between January 1, 2016 and the present, from Texas Tech University Board of Regents member Mickey L. Long which relate to University business. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public. Digital production is preferred.	Yes		4-19-18 Correspondence from TTU to AG Claims Litigation Exception.
R-36	4/5/2018	Copies of all email communications between Chancellor Robert Duncan and Texas Tech University Board of Regents member Mickey L. Long between January 1, 2016 and the present. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public. Digital production is preferred.	Yes		4-19-18 Correspondence from TTU to AG Claims Litigation Exception.
R-37	4/6/2018	Copies of all emails sent or received between Texas Tech University Board of Regents member Larry Anders AND OR Jerry Turner, Kent Hance, Charlotte Bingham, between December 10, 2009 and December 31, 2010 which relate to University business. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public. Digital production is preferred.	Yes		4-20-18 Correspondence from TTU to AG Claims Litigation Exception
R-38	4/9/2018	Copies of all documents detailing any settlements, payments or complaints of harassment or assault by any students, faculty or staff of Texas Tech University between January 1, 2013 and the present.	Yes		4-23-18 Correspondence from TTU to AG Claims Litigation, Law Enforcement, and Operation of Law. TTU Claims there are no payments or settlements responsive to our request.
R-39	4/10/2018	Copies of any documents detailing payments to vendors related to the Texas Tech Football Program, should include the date, the name of the vendor and the amount paid, between January 1, 2015 and the present.			No response yet.
R-40	4/11/2018	Copies of all email communications between any Chancellor, Vice Chancellor or Chancellor Emeritus and Texas Tech University Board of Regents member			No response yet.

Id. No.	Date	Request	ORD Req.?	ORD Issued?	TTU's Resp.
		Christopher M. Huckabee between January 1, 2016 and the present. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public. Digital production is preferred.			
R-41	4/12/2018	Copies of all email communications between any Chancellor, Vice Chancellor or Chancellor Emeritus and Texas Tech University Board of Regents member L. Frederick Francis between January 1, 2016 and the present. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public. Digital production is preferred.			No response yet.
R-42	4/13/2018	Copies of all documents detailing any communications between any staff member of Texas Tech University and any member of the Lubbock Police Department regarding allegations of sexual assault between January 1, 2013 and the present.			No response yet.
R-43	4/13/2018	Copies of all documents detailing any written complaint and subsequent investigation as well as any completed investigation into allegations of a hostile work environment in the Texas Tech University Biology Department.			No response yet.
R-44	4/16/2018	Copies of all email communications between any Chancellor, Vice Chancellor or Chancellor Emeritus and Texas Tech University Board of Regents member Tim Lancaster between January 1, 2016 and the present. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public. Digital production is preferred.			No response yet.
R-45	4/17/2018	Copies of all email communications between any Chancellor, Vice Chancellor or Chancellor Emeritus and Texas Tech University Board of Regents member Ron Hammonds between January 1, 2016 and the present. You may redact information made confidential under state law, and information which would be considered legal advice. You may withhold any mass mailings readily available to the public. Digital production is preferred.			No response yet.

### VIII. COUNT ONE: MANDAMUS AGAINST BOTH DEFENDANTS

39. Plaintiff qualifies as a “Requestor” under the TPIA. Texas Tech is a “governmental body” under the TPIA and its Officer for Public Information is Dr. Schovanec.

40. Pursuant to Tex. Gov't Code § 552.321(a):

A requestor...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....

41. Pursuant to Tex. Gov't Code § 552.221(a), an officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both, on application by any person to the officer. The term "promptly" as used in the above-cited provision means "as soon as possible under the circumstances." *See id.* Importantly, if the requested documents cannot be produced within 10 business days after the date the information is requested, "the officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication." Tex. Gov't Code § 552.221(d).

42. However, a governmental body may wish to withhold information. If that is the case, the governmental entity must ask for a decision from the attorney general as to whether the requested information falls into one of the exceptions to the TPIA or must otherwise be disclosed. Tex. Gov't Code § 552.301(a). The governmental body that requests an attorney general decision must do so no later than the 10th business day after the date of receiving the request. Tex. Gov't Code § 552.301(b). If the governmental body fails to timely make a request for an attorney general decision, the information requested 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.

**A. TTU HAS REFUSED TO EITHER PRODUCE RESPONSIVE PUBLIC INFORMATION OR ASK FOR AN ATTORNEY GENERAL'S DECISION FOR CERTAIN REQUESTS.**

43. Here, Texas Tech University failed to respond to or request an opinion from the attorney general for Requests R-6 and R-29. The documents requested are therefore presumed to be subject to disclosure and must be produced.

**B. TTU HAS REFUSED TO PRODUCE PUBLIC INFORMATION RESPONSIVE TO PLAINTIFF'S REQUESTS THAT TTU CONTENDS HAVE BEEN WITHDRAWN AS AN OPERATION OF LAW.**

44. Additionally, Plaintiff seeks mandamus relief for the following requests that TTU contends have been withdrawn as an operation of law: R-1, R-2, R-3, R-4, R-5, R-7, R-8, R-9, R-10, R-11, R-12, R-13, R-14, R-15, R-16, R-17, R-18, R-19, R-20, R-21, R-22, R-23, R-24, and R-25.

**C. TTU HAS REFUSED TO PRODUCE PUBLIC INFORMATION RESPONSIVE TO PLAINTIFF'S REISSUED REQUESTS.**

45. In response to TTU's claim that the bulk of Plaintiff's claims must be considered withdrawn as an operation of law, Plaintiff reissued those requests. However, TTU is now arguing that it does not have to comply with the requests because of the litigation exception. In other words, what was once public information is no longer public information because Plaintiff sued to enforce its rights under the TPIA to have the information released. Plaintiff hereby requests the Court issue a writ of mandamus compelling TTU to produce any public information it has and which is responsive to R-35, R-36, R-37, and R-38. (Additionally, Plaintiff requests the Court to issue a writ of mandamus compelling TTU to produce any public information it has and which is

responsive to R-39, R-40, R-41, R-42, R-43, R-44, and R-45, to the extent that TTU fails to respond.)

**D. THE ATTORNEY GENERAL ERRED WHEN HE DETERMINED THAT CERTAIN DOCUMENTS WERE EXEMPTED FROM DISCLOSURE.**

46. Finally, Plaintiff seeks mandamus relief for the following requests for which an attorney general's opinion was issued: R-27, R-28, R-30, and R-33.

47. By letter dated February 20, 2018, the Attorney General issued open records decision OR2018-03986 which was regarding Plaintiff's request R-27 and R-28. In OR2018-03986, the Attorney General determined that certain unidentified documents produced by TTU were excepted from disclosure under the TPIA pursuant to Tex. Gov't Code § 552.107(1) because those documents were protected by the attorney-client privilege. The Attorney General also found that certain unidentified documents could be withheld pursuant to Tex. Gov't Code § 552.111. Lastly, the Attorney General found that certain unidentified documents could be withheld pursuant to Tex. Gov't Code § 552.1235 and § 552.117 because they contained identifying information of either persons who donated money to TTU or former and current employees of TTU who had requested confidentiality under section 552.024 of the Government Code.

48. Plaintiff disagrees with the Attorney General's determination that responsive public information is shielded from disclosure by Sections 552.107(1), 552.111, 552.1235, or 552.117. Plaintiff further disagrees that TTU has otherwise fully complied with OR2018-03986.

49. By letter dated February 23, 2018, the Attorney General issued open records decision OR2018-04298 which was regarding Plaintiff's request R-30. In OR2018-4298, the Attorney General determined that TTU could withhold certain unidentified documents pursuant to Tex. Gov't Code § 552.111 because the documents were shielded by the deliberative process privilege.

50. Plaintiff disagrees with the Attorney General's determination that the deliberative process privilege applies to the responsive public information and is thereby exempted from disclosure by Section 552.111. Plaintiff further disagrees that TTU has otherwise fully complied with OR2018-04298.

51. Plaintiff disagrees with the Attorney General issued open records decision OR2018-08255 which is regarding R-33.

52. Ultimately, and regardless of the Attorney General decisions, TTU is refusing to supply public information responsive to requests R-27, R-28, R-30, and R-33.

**E. ALL OTHER REQUESTS.**

53. TTU has also refused to produce public information response to R-31, R-32, and R-34. Therefore, Plaintiff seeks a writ of mandamus seeking to compel responses to those requests.

**F. PLAINTIFF IS ENTITLED TO A WRIT OF MANDAMUS.**

54. Dolcefino therefore seeks the remedy of a petition for mandamus for Defendant's refusal to produce the requested public information as required by the Texas Public Information Act. Tex. Gov't Code § 552.321(a); *Kallinen v. City of Houston*, 462

S.W.3d 25 (Tex. 2015). Dolcefino respectfully requests an accelerated hearing and an order granting mandamus and requiring TTU to produce the requested information.

#### **IX. COUNT TWO: DECLARATORY JUDGMENT AGAINST SHO VANEC**

55. Plaintiff brings this declaratory judgment against Dr. Shovanec in his official capacity. Plaintiff intends this claim to be an *ultra vires* action.

56. Dolcefino has standing under the Texas Public Information Act to seek a declaratory judgment that the requested documents must be released. Tex. Gov't Code § 552.3215; *Kessling v. Friendswood Indep. Sch. Dist.*, 302 S.W.3d 373, 383 (Tex. App.—Houston [14th Dist.] 2009, pet. denied). In addition, Dolcefino is entitled to a declaratory judgment regardless of “whether or not additional relief is or could be claimed,” whether by petition for mandamus or otherwise. Tex. Civ. Prac. & Rem. Code § 37.003(a).

57. Dolcefino requests a declaration by this Court by final order that: (1) the information sought by Dolcefino is public information not excepted from disclosure; (2) TTU has a duty to promptly release the requested information to Dolcefino; and (3) Certain charges from TTU for the requested information are unauthorized.

58. Dolcefino hereby requests the above declarations in regard to those requests that TTU contends have been withdrawn as an operation of law. Those requests are: R-1, R-2, R-3, R-4, R-5, R-7, R-8, R-9, R-10, R-11, R-12, R-13, R-14, R-15, R-16, R-17, R-18, R-19, R-20, R-21, R-22, R-23, R-24, and R-25.

59. Pursuant to Chapter 37 of the Texas Practice and Remedies Code, Dolcefino is entitled to recover from Defendants its reasonable and necessary attorneys' fees incurred in the prosecution of its claims for declaratory relief, together with costs of court,



out-of-pocket expenses incurred in connection with this action, as well as conditional awards in the event of any post-verdict proceedings and appeals. *See* Tex. Civ. Prac. & Rem. Code § 37.009.

60. All conditions precedent to Dolcefino's causes of action have been performed or have occurred.

#### **X. CONCLUSION AND PRAYER**

**WHEREFORE**, Plaintiff Dolcefino Consulting prays that the Defendants be cited to appear and answer; that the Court award the relief requested herein; that Plaintiff be awarded its attorneys' fees; that costs of court be taxed against Defendants; and that the Court award such other relief to which Plaintiff may be entitled.

Respectfully Submitted,

**LYNN PINKER COX & HURST LLP**

By: /s/ Michael K. Hurst

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon the following *via E-File* on April 24, 2018:

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