

CAUSE NO. 18-0998-C395

<b>TERRILL W. PUTNAM</b>	§	<b>IN THE DISTRICT COURT OF</b>
<i>Plaintiff,</i>	§	
	§	
<b>v.</b>	§	<b>WILLIAMSON COUNTY, TEXAS</b>
	§	
<b>CITY OF GEORGETOWN, TEXAS,</b>	§	
<b>DALE ROSS, MAYOR OF</b>	§	
<b>THE CITY OF GEORGETOWN,</b>	§	
<b>and DAVID MORGAN,</b>	§	
<b>CITY MANAGER OF THE CITY</b>	§	
<b>OF GEORGETOWN</b>	§	
<i>Defendants.</i>	§	<b>395<sup>th</sup> JUDICIAL DISTRICT</b>

**PLAINTIFF’S FIRST AMENDED PETITION**

Plaintiff Terrill W. Putnam files this First Amended Petition against Defendants City of Georgetown (the “City”), Dale Ross in his official capacity as Mayor of the City of Georgetown, and David Morgan in his official capacity as City Manager of the City of Georgetown (collectively, the “Defendants”), and in support show the Court as follows:

**I. EXECUTIVE SUMMARY**

According to the Georgetown Mayor, the City’s move to renewables “has garnered over 2.1 billion impressions around the globe, which is equivalent to a \$20 million advertising campaign.” National Public Radio describes Georgetown as “one of the first cities in the country to be 100 percent powered by renewable energy.”<sup>1</sup> Georgetown is the “eco city of the future.”<sup>2</sup> So, why is Georgetown hiding public records showing the true cost of its renewable energy policies?

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<sup>1</sup> <https://www.npr.org/2017/03/07/519064002/texas-city-leads-the-way-on-renewable-energy> (last visited August 11, 2018).

<sup>2</sup> <https://www.theguardian.com/environment/2017/oct/16/texas-town-georgetown-energy-green> (last visited August 11, 2018).

On November 16, 2016, Terrill W. Putnam requested a “payback analysis” from the City of Georgetown for solar panels installed on the Westside Service Center roof, located at 5501 Williams Drive, Georgetown, Texas 78633, as he was told to do so by a Georgetown City Councilman. Mr. Putnam’s request is governed by the Texas Public Information Act. The Texas Public Information Act promotes the policy that citizens are entitled to complete information, unless otherwise expressly provided by law, about the affairs of government and the official acts of public officials and employees. Through the Texas Public Information Act, there are procedures for responding to a public information request, and procedures to follow if a governmental entity wishes to hold information as exempt from the Act. In response, the City of Georgetown claimed the payback analysis as exempt from public disclosure and withheld the document.

On August 28, 2017, Mr. Putnam made a second public information request to the City of Georgetown seeking documents supporting the factual basis for the City’s claimed exception from disclosure for the payback analysis. The City failed to respond to Mr. Putnam’s second request.

Accordingly, Plaintiff seeks a declaratory judgment that the records requested by Mr. Putnam are not exempt under Texas state law.

## **II. DISCOVERY CONTROL PLAN**

Plaintiff intends to conduct Level 2 discovery under Rule 190 of the Texas Rules of Civil Procedure.

### **III. PARTIES**

#### **A. PLAINTIFF**

*Terrill W. Putnam*

1. Plaintiff Terrill W. Putnam is a resident of Georgetown, Texas.

#### **B. DEFENDANTS**

2. Defendants are the City of Georgetown, Dale Ross in his official capacity as Mayor of the City of Georgetown, and David Morgan, in his official capacity as City Manager of the City of Georgetown.

3. The City of Georgetown is a home rule municipality headquartered in Williamson County, Texas.

4. Defendant Dale Ross is the Mayor of the City of Georgetown.

5. Defendant Morgan is the City Manager of the City of Georgetown, serving as an officer for public information.

6. Pursuant to Texas Civil Practice and Remedies Code Section 17.024(b), Defendants may be served by serving the mayor, clerk, secretary, or treasurer of the City at 405 Martin Luther King Street, Georgetown, Texas 78626.

### **IV. JURISDICTION AND VENUE**

7. Jurisdiction is proper in this Court pursuant to Article V, Section 1 and 8 of the Texas Constitution and Sections 24.007 and 24.008 of the Texas Government Code. This Court has subject matter jurisdiction pursuant to Sections 552.321 and 552.3215 of the Texas Government Code because Plaintiff seeks to vindicate his rights under the Texas Public Information Act via the Uniform Declaratory Judgments Act. Tex. Civ. Prac. & Rem. Code § 37.003 (LEXIS, Lexis Advanced through 2017 Reg. Sess. & 1st C.S., 85th Leg.).

8. Venue is appropriate in Williamson County pursuant to Sections 15.002(a)(1), (a)(3) and 15.005 of the Texas Civil Practice and Remedies Code, and Section 552.321(b) of the Texas Government Code because all or a substantial part of the events giving rise to the claim occurred in Williamson County.

**V. STATEMENT OF FACTS**

**A. MR. PUTNAM'S FIRST PUBLIC INFORMATION REQUEST**

9. On November 16, 2016, Mr. Putnam submitted an open records request seeking a “payback analysis” from the City of Georgetown, reference number G003151-112116, for solar panels installed on the Westside Service Center roof, located at 5501 Williams Drive, Georgetown, Texas 78633.

10. Mr. Putnam’s request was due to his observation that the Westside Service Center roof contained several hundred solar panels. The Westside Service Center is a project of the City of Georgetown. Georgetown City Councilman Steve Fought told Mr. Putnam that a payback analysis had been performed and that Mr. Putnam should request it through the open records process.

11. In describing the basis for his request of the payback analysis, Mr. Putnam stated, “I assume the panels are hooked to the grid and that they generate more electricity than the Center requires, is that true? Looking forward to seeing the complete analysis.”

12. On December 2, 2016, Defendants sought an open records determination from the Texas Attorney General. The City claimed that the payback analysis was “reasonably related to a competitive matter” under Section 552.133(b) of the Texas Government Code and therefore exempt.

13. On December 15, 2016, the Office of Attorney General issued Open Records Decision OR2016-27724 in response to the City's request for a determination. Bound to accept as true the City's claim of an exemption from disclosure, Texas Attorney General's response stated that the information requested by Mr. Putnam relates to competitive matter of a public power utility under section 552.133(a-1) and directed the City to withhold the requested information.

**B. MR. PUTNAM'S SECOND PUBLIC INFORMATION REQUEST**

14. Mr. Putnam submitted a second public information request to Defendants on August 28, 2017, reference number G004387-082817, requesting documents that relate to three matters: (1) documents that relate to or demonstrate how the payback analysis concerning solar panel installation is reasonably related to a competitive matter; (2) documents that relate to or support the City's assertion that the City engages in competitive activity; and (3) documents that relate to or demonstrate that electricity generated by the solar panel installation is sold or transferred into the marketplace.

15. The City responded to Mr. Putnam's second request on October 12, 2017. In its response, the City concluded that Mr. Putnam's second request was a repetitive request that the City had already responded to. Additionally, the City stated that Mr. Putnam requests documents that required legal research or analysis, which the City stated it is not required to do.

16. The City did not seek an open records determination from the Texas Attorney General's office for Mr. Putnam's second open records request.

**C. MR. PUTNAM'S WRITTEN COMPLAINT**

17. In response to the City's failure to produce responsive documents or seek an Attorney General ruling, Mr. Putnam filed a written complaint with the Office of Attorney General against the City on October 30, 2017. The complaint sought assistance from Office of Attorney

General against the City for refusing to produce any documents in response to Mr. Putnam's second request. Specifically, Mr. Putnam sought assistance to compel the City to produce the requested documents. The written complaint also described that more than ten days passed and the City did not produce documents or seek an Open Records Decision from the Office of Attorney General, meaning that the City waived any exception to the request.

18. The Office of the Attorney General contacted the City on December 19, 2017, to notify it that Mr. Putnam filed a written complaint against the City for failing to respond appropriately to a request for information; assigned identification number 691048. The letter notified the City that the Office of the Attorney General's records did not show a request for an Attorney General decision in accordance with Section 552.301 of the Public Information Act. The letter requested a written response within ten business days of receipt notifying the Office of the Attorney General if the information will be released, whether there is no information responsive to the request, or whether the City believes the information is exempt or the City will request an Attorney General decision.

19. The City responded to the Office of Attorney General on January 5, 2018, that it did not possess any responsive information other than the payback analysis documents. The City again emailed the Office of Attorney General on May 3, 2018, stating no responsive information to Mr. Putnam's request other than the previously submitted documents exempted from disclosure as related to a competitive matter.

20. On May 31, 2018, the Office of Attorney General sent a letter to Mr. Putnam stating that the responsive information is subject to Open Records Letter Decision OR2016-27724 (2016), and the information was withheld pursuant to the ruling. Additionally, the Office of Attorney

General stated that the City could find no additional information responsive to Mr. Putnam's request. As a result, the Office of Attorney General closed its file on the matter.

21. While the City of Georgetown continues to withhold the payback analysis, public statements made by Georgetown officials related to the information contained within the payback analysis contradict Georgetown's claim to the Texas Attorney General that this document needs to be withheld from the public so as to not put the City of Georgetown at a competitive disadvantage.

22. Recently in the Austin American Statesman, Georgetown Mayor Dale Ross made claims about Georgetown's energy policy that a review of the payback analysis would show the truth, specifically that Georgetown's shift to offset its "energy use with renewables" "was predominantly a financial one."<sup>3</sup>

23. The payback analysis will show, in part, whether this claim is true.

## **VI. CAUSE OF ACTION**

### **A. COUNT ONE: DECLARATORY JUDGMENT THAT THE RECORDS REQUESTED BY MR. PUTNAM'S FIRST REQUEST ARE NOT EXEMPT UNDER TEXAS LAW**

24. The preceding paragraphs are realleged and incorporated by reference.

25. The Open Records Letter Decision, OR2016-27724 (2016), based on Mr. Putnam's first public information request and not binding on the Court, *Thomas v. Cornyn*, 71 S.W.3d 473, 483 (Tex. App.—Austin 1992, no pet.), should be reversed for three reasons.

26. First, the payback analysis is within the category of public investment information under Section 552.0225 of the Texas Public Information Act, and Mr. Putnam has a right to access such information.

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<sup>3</sup> See <https://www.mystatesman.com/news/opinion/commentary-georgetown-mayor-raise-glass-renewable-energy/uZC2r34tZUIcEDnGikHZPP/> (last visited August 11, 2018).

27. This payback analysis does not relate to a competitive matter, nor is it valid for Defendants to withhold the payback analysis pursuant to Section 552.133, relating to confidentiality of public power utility competitive matters.

28. Lastly, Section 552.001(b) of the Texas Public Information Act puts forth a clear, unequivocal policy that it shall be liberally construed in favor of granting a request for information. This policy of liberally construing in favor of granting a request for information is not only reiterated in Section 552.0025, but throughout the Texas Public Information Act. The use of the word “shall,” according to the Code Construction Act, imposes a duty on the Court to fulfill this policy interest to maintain an open, accountable government. Tex. Gov’t Code § 311.016.

29. For these reasons, pursuant to Texas’s Uniform Declaratory Judgments Act and Texas’s Public Information Act, Plaintiff requests that this Court enter a judgment declaring that the requested payback analysis is a public record subject to disclosure under the Texas Public Information Act.

## **VII. ATTORNEYS’ FEES**

30. Under the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code Ann. § 37.009, Plaintiff is entitled to recover “costs and reasonable and necessary attorney’s fees as are equitable and just.”

31. Moreover, under the Texas Public Information Act, Tex. Gov’t Code § 552.323, Plaintiff is entitled to recover in an action brought under Sections 552.321 or 552.3215 if he substantially prevails.

32. Plaintiff seeks an award of his reasonable attorneys’ fees for the preparation of this suit, prosecution of this suit, and all appeals.



**VIII. PRAYER AND CONCLUSION**

**THEREFORE**, Plaintiff requests the Court issue the following relief:

- i. A declaration that the records requested by Plaintiff are not exempt under Texas law;
- ii. A declaration that the payback analysis is public and should be disclosed;
- iii. An award to Plaintiff of his attorneys' fees and reasonable costs; and
- iv. All other and further relief that this Court may deem proper in law or equity.

Respectfully submitted,



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*Attorneys for Plaintiff*

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on all counsel of record on this 28<sup>th</sup> day of February, 2019, in compliance with the Texas Rules of Civil Procedure.

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A handwritten signature in black ink that reads "Robert Henneke". The signature is written in a cursive style with a long horizontal flourish at the end.

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ROBERT HENNEKE