

**NO. DC-23-01161**

**TEXAS PUBLIC POLICY  
FOUNDATION,  
*Plaintiff,***

**v.**

**HIGHLAND PARK INDEPENDENT  
SCHOOL DISTRICT,  
*Defendant.***

§  
§  
§  
§  
§  
§  
§  
§

**IN THE DISTRICT COURT**

**DALLAS COUNTY, TEXAS**

**14TH JUDICIAL DISTRICT**

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND  
RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	iii
INTRODUCTION .....	1
STATEMENT OF FACTS .....	3
A. BACKGROUND .....	3
STANDARD OF REVIEW .....	5
ARGUMENT .....	6
I. Highland Park Is Not Entitled To A Vast Expansion Of The Attorney-Client Privilege.....	6
II. To The Extent The Attorney-Client Privilege Applies, It Is Waived.....	11
III. To The Extent The Attorney-Client Privilege Applies, And Is Not Waived, At Least The Factual Portion Of The Report Must Be Disclosed.....	12
IV. At Minimum, The District’s Motion for Summary Judgment Must Be Denied.....	14
CERTIFICATE OF SERVICE.....	15

## TABLE OF AUTHORITIES

<b>Cases:</b>	<b>Page(s):</b>
<i>Adelman v. Peter</i> , No. CIVA L-08-6, 2009 WL 4456298 (S.D. Tex. Nov. 30, 2009) .....	8
<i>Chevron Corp. v. Redmon</i> , 745 S.W.2d 314 (Tex. 1987) .....	12
<i>Harlandale Indep. Sch. Dist. v. Cornyn</i> , 25 S.W.3d 328 (Tex. App.—Austin July 27, 2000, pet. denied).....	7, 8, 9
<i>In re Allen</i> , 106 F.3d 582 (4th Cir. 1997) .....	8
<i>In re LTV Sec. Litig.</i> , 89 F.R.D. 595 (N.D. Tex. 1981).....	8
<i>In re Tex. Farmers Ins. Exch.</i> , 990 S.W.2d 337 (Tex. App.—Texarkana Feb. 18, 1999, rehearing overruled) .....	8, 9
<i>Navigant Consulting, Inc. v. Wilkinson</i> , 220 F.R.D. 467 (N.D. Tex. 2004).....	8
<i>Pasadena Ref. Sys. Inc. v. U.S.</i> , No. 3:10-cv-0785-K, 2011 WL 1938133 (N.D. Tex. Apr. 26, 2011), <i>report and recommendation adopted</i> , 2011 WL 1960555 (N.D. Tex May 19, 2011) .....	6
<i>Seibu Corp. v. KPMG LLP</i> , No. 3-00-CV-1639-X, 2002 WL 87461 (N.D. Tex. Jan. 18, 2002) .....	9, 10
<i>Thomas v. Cornyn</i> , 71 S.W.3d 473 (Tex. App.—Austin Feb. 14, 2002, no pet.).....	5
<i>Univ. of Tex. Sys. v. Franklin Ctr. for Gov’t &amp; Pub. Integrity</i> , 675 S.W.3d 273 (Tex. 2023) .....	10
<b>Rules &amp; Statutes:</b>	
Tex. R. Civ. P. 166a(c).....	1, 6, 14
Tex. R. Evid. 511 .....	12

Tex. Educ. Code § 36.001 <i>et. seq.</i> .....	3
Tex. Gov't Code § 522.022(a)(1).....	1
Tex. Gov't Code § 552.003(1-a)(E) .....	13
Tex. Gov't Code § 552.022(a)(1).....	5, 9
Tex. Gov't Code § 552.022(a)(16).....	12
Tex. Gov't Code § 552.301(a)-(b).....	13
Tex. Gov't Code § 552.321(a) .....	5
Tex. Gov't Code § 552.0222(b)(4).....	13

***Other Authorities:***

<i>Seay Tennis Center</i> , Highland Park Indep. School District, <a href="https://tinyurl.com/3c4k32p6">https://tinyurl.com/3c4k32p6</a> .....	3
Elvia Limón, <i>Highland Park ISD Plans for New Indoor Tennis Facility Draws Concerns About Extra Traffic</i> , The Dallas Morning News (Feb. 13, 2017), <a href="https://tinyurl.com/bd5992z2">https://tinyurl.com/bd5992z2</a> .....	3
<i>Tylir Jimenez To Lead Scots Tennis Program</i> , Highland Park Independent School District, <a href="https://tinyurl.com/35kpr44c">https://tinyurl.com/35kpr44c</a> .....	4
Tex. Att'y Gen. Op. OR2019-28665 .....	13
Tex. Att'y Gen. Op. OR2022-36895 .....	5, 7
<i>2022 Public Information Handbook</i> .....	11, 12

Plaintiff, Texas Public Policy Foundation (TPPF) files this motion for summary judgment pursuant to Tex. R. Civ. P. 166a(c) and its response to Defendant, Highland Park Independent School District (HPISD or the District). TPPF seeks a writ of mandamus requiring disclosure of the investigative report prepared by the public accounting firm Whitley Penn on behalf of and with the taxpayer funds belonging to Highland Park along with a denial of the district's motion for summary judgment.

## **INTRODUCTION**

This case presents a question at the core of the Texas Public Information Act: Is a final factual report, prepared by a governmental entity with taxpayer funds, subject to the open records act? Prior to 2021, bad actors at the Seay Tennis Center—a state-of-the-art tennis center owned by HPISD—were requiring cash payments for tennis services and then pocketing the money. Many in the public believe some of this cash also enriched certain public officials within HPISD to ensure their silence. After repeated complaints from the public, HPISD finally performed an investigation. During the investigation, a report was created by the public accounting firm Whitley Penn in order to determine how much money was improperly directed away from Highland Park and into the pockets of a few. HPISD made changes, requiring payments to be via credit card, and this resulted in a jump in revenue of over one million dollars between 2020 and 2021. There is no evidence any improperly taken funds have ever been recovered. Since then, Highland Park has done everything it can to prevent the public from finding out what really happened.

The Texas Public Policy Foundation seeks the disclosure of a single document: the Whitley Penn Report. All that is being sought is a factual, investigative report, one conducted by non-lawyers, into how a few people used HPISD property to enrich themselves. This information is at the heart of the Texas Public Information Act ("TPIA") which requires the disclosure of "a completed report." Tex. Gov't Code § 522.022(a)(1). It is undisputed that this information is discoverable under the TPIA.

HPISD’s Motion for Summary Judgment, Ex. 3 to HPISD MSJ at p. 28 (OAG stating that “The submitted information consists of a completed report subject to section 55.022(a)(1).”) Accordingly, this case is fundamentally different than HPISD’s *sole* authority, *University of Tex. Sys. V. Franklin Ctr. for Gov’t & Pub. Integrity*, 675 S.W.3d 273 (Tex. 2023). That case was merely about whether the *documents underlying* the “completed report” were discoverable, because the report itself had already been produced to the public as required by the TPIA. *Id.* at 277-78 (“The Kroll Report...was published on UT Austin’s website...Unsatisfied with the Kroll Report, Franklin Center of Government...sought complete access to the documents underlying the report.”). Unlike the Franklin Center, TPPF only seeks the completed report itself. Because HPISD has refused to disclose this report, TPPF seeks this Courts resolution.

HPISD’s Motion for (Partial) Summary Judgment is facially deficient and must be denied. Even assuming that *any portion* of the Whitley Penn Report is protected by the attorney-client privilege because Whitley Penn is a “lawyer’s representative” under T.R.E. 503, this is no basis to “deny all Petitioner’s requested relief” as HPISD requests. Mot. at 6. HPISD does not even *attempt* to refute the reasons, set forth in TPPF’s Original Complaint, why the Whitley Penn Report is discoverable *despite* Whitley Penn’s arrangement with Thompson & Knight—such as the fact that HPISD waived any privilege that might obtain to the Report. Furthermore, HPISD has made no showing that attorney-client privilege covers information related to public contracts, such as the Whitley Penn Report, under Section 552.0222 of the TPIA. Accordingly, many fact questions are outstanding that defeat HPISD’s Motion. However, a review of the evidence, set forth below, conclusively answers these questions, demonstrating that *TPPF* is the party entitled to summary judgment and the discovery of the Report.

## STATEMENT OF FACTS

### A. BACKGROUND

The Seay Tennis Center is a tennis center owned by HPISD that serves the schools and surrounding community. *Seay Tennis Center*, Highland Park Indep. School District, <https://tinyurl.com/3c4k32p6>. It was built at its current location and funded by millions of dollars allocated from a Highland Park bond package passed by the voters. Elvia Limón, *Highland Park ISD Plans for New Indoor Tennis Facility Draws Concerns About Extra Traffic*, The Dallas Morning News (Feb. 13, 2017), <https://tinyurl.com/bd5992z2>. The revenues from this facility are important to Highland Park, as Highland Park keeps 100% of the profits earned at the Seay Center since they are not subject to the same “Robin Hood” provisions that redirect money from local property taxes away from Highland Park. Tex. Educ. Code. § 36.001 *et. seq.*

In recent years, the management of the Seay Center has been heavily criticized by those inside and outside of the Center. In 2015 a group of parents sent a letter outlining their concerns at the time to Tim Turner, Highland Park’s Assistant Superintendent of Business Services. Ex. 1 (Letter to Tim Turner). And in 2020, Jason Holland, a former tennis professional at the Seay Center, sent a letter documenting corruption at the Seay Center and how he was fired by Dan Holden, the former Director of the Seay Center, and Tylir Jimenez, an employee at the Seay Center and formerly Highland Park High School’s JV tennis coach, for not giving back some of his cash (\$40,000 of cash) to one of their “investments.” Ex. 2 (Letter from Jason Holland).

Until 2021, the bulk of the Seay Center’s financial activities were cash transactions. Ex. 1 at p. 2. This was not out of need. The Seay Center had the ability to take credit card payments through a point-of-sale device that it used for selling

merchandise. *Id.* Mr. Holland’s accusations amounted to Holden and Jimenez operating a thinly-veiled kickback scheme.

The numbers support this conclusion. Following the implementation of using the credit card machine in 2021, revenues at the Seay Center—which were suddenly being reported rather than pocketed—jumped by an order of magnitude from \$760,832 in 2020 to \$1,902,224 in 2021. Ex. 3 at p. 5 (2020 HPISD Comprehensive Annual Financial Report); Ex. 4 at p. 5 (2021 HPISD Comprehensive Annual Financial Report).

In response to such allegations, HPISD directed Whitley Penn to figure out how money was directed away from HPISD and into the pockets of a few. Ex. 5 (Whitley Penn Contract). Upon information and belief, Whitley Penn interviewed individuals and reviewed financial records. Whitley Penn wrote a report that details the facts it learned, including an estimate of how much money is missing or unaccounted for.

But what is in that report is still a mystery. The District never published the report. HPISD “did not file any lawsuits or take any other direct “legal” action, in court or otherwise, as a result of having received the Whitley Penn Report.” Ex. 6 (Amended Response to ROGs). Indeed, individuals involved have been promoted and the District has not sought to recover any of the money lost. *See, e.g. Tylir Jimenez To Lead Scots Tennis Program*, Highland Park Independent School District, <https://tinyurl.com/35kpr44c>.

The only information that the public has received regarding the report came from Michael White, HPISD’s Assistant Superintendent for Business Service. In an email, with Highland Park’s counsel attached, Mr. White stated that “the District’s attorneys (copied on this email) conducted a thorough investigation, which included reviewing all of the types of documentation that you mention *and doing so with expert assistance*.” Ex. 7 (Michael White Letter). This is a crystal-clear reference to the



Whitley Penn Report. Mr. White continued, assuring the public that there was “no malfeasance occurring” and that “no funds are being misdirected or mismanaged.” *Id.* This was not Mr. White’s only communication with the public. *Id.*, *e.g.*, (“I believe that we have previously discussed your concerns in our lengthy phone conversations,” and “to address some of the comments in your earlier emails.”).

On August 22, 2022, TPPF filed a request under the Texas Public Information Act with Defendant HPISD. Compl. At 2–3. The request sought a copy of the final report. Although Tex. Gov’t Code §552.022(a)(1) requires the disclosure of “a completed report,” the District claimed attorney-client privilege under rule 503 of the Texas Rules of Evidence. Compl. at 3.<sup>1</sup>

Because HPISD has still not disclosed the Report, TPPF has been forced to request this writ of mandamus from this Court. Tex.. Gov’t Code § 552.321(a) (providing 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 supply public information . . .”).

### **STANDARD OF REVIEW**

“A requestor may bring a mandamus action...despite the issuance of an adverse attorney general’s opinion that favors withholding of the information. In addition, opinions of the attorney general are not binding on the courts.” *Thomas v. Cornyn*, 71 S.W.3d 473, 483 (Tex. App.—Austin Feb. 14, 2002, no pet.). The common law elements of mandamus do not apply in an action arising under Tex. Gov’t Code §

---

<sup>1</sup> On September 21, 2022, HPISD sought a ruling from the Open Records Division of the Attorney General as to whether the Report was excepted from disclosure by the attorney-client privilege. On November 30, 2022, the Open Records Division of the Attorney General issued its ruling, agreeing that the report was discoverable as “a completed report subject to section 552.022(a)(1)” but ultimately declining to compel production of the Report. Tex. Att’y Gen. Op. OR2022-36895.

552.321, rather, “a requesting party need only show that the governmental body has not complied with the act.” *Id.* at 484.

To prevail on a traditional summary-judgment motion, a movant must show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c).

## **ARGUMENT**

### **I. Highland Park Is Not Entitled To A Vast Expansion Of The Attorney-Client Privilege**

The Report is not excepted from disclosure under Texas Rule of Evidence 503(b)(1).

First, the Report does not meet the first requirement of applying the attorney-client privilege—that the document is a communication. Because HPISD “failed to specify a recipient” for the Report, HPISD “has failed to prove that [the Report is a] communication[],” and thus the Report is “not protected by any privilege.” *Pasadena Ref. Sys. Inc. v. U.S.*, No. 3:10-cv-0785, 2011 WL 1938133, at \*3 (N.D. Tex. Apr. 26, 2011), *report and recommendation adopted*, 2011 WL 1960555 (N.D. Tex. May 19, 2011). Furthermore, the Report is not a communication because it was allegedly never disclosed to HPISD. Ex. 5, at ¶ 6. It is entirely likely that actual communication took place surrounding the creation of the report and following the same. But the Report itself is just that, the factual result of an investigation conducted by non-lawyers. The communication is the email or letter *transmitting* the Report to Holland & Knight. Accordingly, because the Report is not a communication, the attorney-client privilege does not apply, and it must be disclosed.

Second, to the extent that actual privileged communications are recounted in the Report, HPISD is wrong to assert attorney-client privilege for factual information produced by a non-attorney. Courts have been clear: Attorney-client privilege “does not apply to communications between a client and an attorney where the attorney is

employed in a non-legal capacity, for instance as an accountant, escrow agency, negotiator, or notary public.” *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328, 332 (Tex. App.—Austin July 27, 2000, pet. denied).

The district, as well as the attorney general’s opinion relied on *Harlandale*<sup>2</sup>, and cases in the same line, for the proposition that the entirety of the Report must be withheld, including the factual statements that were the result of the financial investigation by non-lawyers. Tex. Att’y Gen. Op. OR2022-36895. However, applying *Harlandale* to the facts of this case would result in a vast expansion of attorney-client privilege and give future governmental bodies a blueprint for avoiding scrutiny. Any local, political subdivision could be captured and entrenched by an administration that only learns embarrassing facts under the guise of attorney-client privilege. The public record of the administration and its oversight would appear unblemished, and citizens would not even realize anything is being hidden from them. This is a systemic threat to government by the people. Because in addition to allowing an administration to hide its flaws by specious claims of privilege, it would also allow the administration to waive the “privilege” if doing so would hurt its political adversaries.

Furthermore, such a broad view of attorney-client privilege misreads *Harlandale*. In *Harlandale*, the court found that the entire report created by the attorney doing the investigation was privileged, including the factual portions of that report, because “the investigative fact-finding was not the ultimate purpose for which she was hired.” *Harlandale Indep. Sch. Dist. v. Cornyn*, 25 S.W.3d 328, 334 (Tex. App.—Austin July 27, 2000, pet. denied). The attorney in that case “was not hired by Harlandale strictly as an investigator; rather, she was employed to investigate Villareal’s allegations *and* to use her legal training to provide Harlandale with a

---

<sup>2</sup> Mot. at Ex. 2, p. 21. Realizing that its reading of *Harlandale* it presented to the OAG was incorrect, HPISD failed to mention *Harlandale* in its Motion.

recommended course of action.” *Id.* at 335, n.13. The same was true in *In re Allen*, the 4th Circuit case on which *Harlandale* relied. It excepted from disclosure an investigation report done by an attorney who was using her legal expertise throughout the investigation. *Harlandale*, 25 S.W.3d at 334 (discussing facts of *In re Allen*). The reason that the attorney-client privilege covers entire reports when authored by lawyers is that “while in house accountants or lay investigators could have been employed to investigate the events in question, neither would have brought to bear the same training, skills and background possessed by attorneys and necessary to make the professional independent analysis and legal recommendations sought.” *In re LTV Sec. Litig.*, 89 F.R.D. 595, 601 (N.D. Tex. 1981).

Even if Whitley Penn had been lawyers and not accountants, the attorney-client privilege would still look to whether they prepared the report in a legal or a non-legal capacity. “Attorney-client privilege therefore does not apply to communications between a client and an attorney where the attorney is employed in a non-legal capacity, for instance as an accountant, escrow agency, or notary public.” *Harlandale*, 25 S.W.3d at 332; *In re Allen*, 106 F.3d 582, 602 (4th Cir. 1997) (“no privilege attaches when an attorney performs investigative work in the capacity of an insurance claims adjuster, rather than as a lawyer”); *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana Feb. 18, 1999, *rehearing overruled*) (“However, the privilege does not apply if the attorney is acting in a capacity other than that of an attorney.”); *Navigant Consulting, Inc. v. Wilkinson*, 220 F.R.D. 467, 474-75 (N.D. Tex. 2004) (“Where an attorney is functioning in some other capacity—such as an accountant, investigator, or business advisor—there is no privilege.”); *Adelman v. Peter*, No. CIVA L-08-6, 2009 WL 4456298, at \*4 (S.D. Tex. Nov. 30, 2009) (“Even in the shadow of impending litigation, purely factual investigations or judgments on business matters are not privileged, even in cases where lawyers are hired to make them.”).

For example, in *In re Texas Farmers Ins. Exch.*, the court found that the documents gathered, including investigation reports, were not privileged because they were created by an attorney who was acting as an insurance investigator rather than as an attorney. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d at 339, 341. The court explained that if such bare facts as investigative reports were covered by the attorney-client privilege, “insurance companies could simply hire attorneys as investigators at the beginning of the claim investigation and claim privilege as to all the information gathered. This is not the intent of the privilege.” *Id.* at 341.

If the attorney-client privilege does not attach to investigative reports created by *lawyers* acting in a non-legal capacity, it certainly cannot apply if the investigation is conducted by the forensic accountants at Whitley Penn. HPISD has no authority for its request to vastly expand the scope of attorney-client privilege as it relates to the core public information of investigative reports. Tex. Gov’t Code § 552.022(a)(1).

Rather than *Harlandale*, the facts here are much more similar to *Seibu Corp. v. KPMG LLP*, No. 3-00-CV-1639-X, 2002 WL 87461 (N.D. Tex. Jan. 18, 2002). In that case, KPMG misrepresented the true financial condition of a company based on faulty audits, and the plaintiff relied on those misrepresentations in making what turned out to be bad investments. *Id.* at \*1. Following the bad audit, in-house counsel at KPMG ordered in-house accountants to conduct a financial investigation about what went wrong, and to make personnel decisions about the partners involved in the audit. *Id.* at \*2-\*4. The court found that “the critical inquiry is not whether the investigation was conducted at the behest of a lawyer, but whether any particular communication in connection with that investigation facilitated the rendition of legal advice to the client.” *Id.* at \*3. Despite the fact that one of the documents at issue was an investigative report directed to in-house counsel and labeled “Confidential, For the Briefing of Legal Counsel,” the court found that this document was not subject to the attorney-client privilege or the work product doctrine because it was not “made

for the purpose of facilitating the rendition of the legal services,” but rather “the primary purpose of the internal investigation was to make personnel decisions regarding the termination of partners responsible for the Q-ZAR audit.” *Id.* at \*3-\*4.

Similarly, here, lawyers ordered non-lawyers to conduct a factual investigation into the financial aspects of what was going wrong at the Seay Center. Ex. 5. Based on that investigation, HPISD used those facts gathered to make certain (insufficient) personnel decisions. *Id.* at ¶ 6. Just as in *Seibu*, the legal advice HPISD was seeking was merely related to personnel decisions—which is plain from the fact that the Holland & Knight partner they hired, Bryan Neal, advertises as a Labor and Employment lawyer. Ex. 8 (Bryan Neal website); Ex. 7 (Michael White email to concerned citizens, copying Neal and identifying him as responsible for HPISD’s investigation).

Indeed, the only case that Highland Park cites in its motion for summary judgment is *Univ. of Tex. Sys. v. Franklin Ctr. for Gov’t & Pub. Integrity*, 675 S.W.3d 273 (Tex. 2023). But while that case has interesting things to say about privilege related to documents used in the preparation of a final report, the final report in that case, containing the investigations factual findings, *was disclosed*. *Id.* at 288 (“The Kroll Report...was published on UT Austin’s website...Unsatisfied with the Kroll Report, Franklin Center of Government...sought complete access to the documents underlying the report.”). The University of Texas admitted that the “investigators’ factual findings . . . would not have been privileged to begin with.” *Id.* *Franklin Center* does not bear on whether the core public information of the factual portions of a “completed report” indisputably discoverable, and compiled by non-lawyers in a non-legal capacity, can nonetheless be hidden from the public. Accordingly, any reliance on *Franklin Center* to prevent the disclosure of the Whitely Penn report is misplaced.

This makes sense. A finding that the Report is privileged would provide a blueprint for any future governmental body to conceal material facts of wrongdoing from voters. The entirety of the Texas Public Information Act would be felled by the simpleton notion of “get the lawyers involved” to shield bad facts from ever being disclosed to the public. How can the taxpayers/voters of HPISD fairly evaluate the administration if the administration is shielding bad facts by learning bad facts through its lawyers? “The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.” *2022 Public Information Handbook* at 2 (citations omitted).

Accordingly, the Seay Center Report created by non-lawyers was not to facilitate the rendition of professional legal services and is not covered by the attorney-client privilege.

## **II. To The Extent The Attorney-Client Privilege Applies, It Is Waived**

To the extent attorney-client privilege covers any portion of the Report, it has been waived due to communications from the relevant administration to concerned citizens. Ex. 7 (Michael White Email). Mr. White revealed in public communications that “the District’s attorneys (copied on this email) conducted a thorough investigation, which included reviewing all of the types of documentation that you mention *and doing so with expert assistance.*” Ex. 7 (Michael White Letter). This is a crystal clear reference to the Whitley Penn Report. Mr. White continued, assuring the public that there was “no malfeasance occurring” and that “no funds are being misdirected or mismanaged.” *Id.* This was not Mr. White’s only communication with the public. *Id.*, e.g., (“I believe that we have previously discussed your concerns in our lengthy phone conversations,” and “to address some of the comments in your earlier emails.”). These statements were made to give the misleading impression that the Report uncovered no wrongdoing. At the very least the mismanaged money has not been recovered, and the “no funds being misdirected or mismanaged” is plainly

false. HPISD is improperly using privilege as a sword and a shield and the privilege is waived. Further, Mr. White acted on behalf of the administration in making these statements (as evidenced by copying Dr. Trigg on the email) and as such was a holder of the privilege voluntarily disclosing a significant part of the privileged matter (albeit falsely). Tex. R. Evid. 511. Accordingly, the privilege, if any, is waived, and the Report should be disclosed.

**III. To The Extent The Attorney-Client Privilege Applies, And Is Not Waived, At Least The Factual Portion Of The Report Must Be Disclosed**

Assuming that the attorney-client privilege does apply to some portion of the Report and the privilege has not been waived, HPISD is wrong to contend that the entire Report must be withheld. First, the text of the Texas Public Information Act contemplates that applicability of the attorney-client privilege to some portion of the document does not justify withholding of the entire document when the information rises to the level of core public information. Tex. Gov't Code § 552.022(a)(16) (defining information in an attorney's fees bill as core public information even if the bill also contains non-discoverable information covered by the attorney-client privilege). A finding that the presence of any information in a document covered by the attorney-client privilege is sufficient to exempt the entire document from disclosure would improperly render "and that is not privileged under the attorney-client privilege" from § 552.022(a)(16) mere surplusage. *Id.*; *Chevron Corp. v. Redmon*, 745 S.W.2d 314, 316 (Tex. 1987) ("We will give effect to all the words of a statute and not treat any statutory language as surplusage if possible."). Accordingly, the ordinary rule that the privilege's applicability to a communication attaches to the complete communication does not apply to core public information under TPIA § 552.022(a). *See 2022 Public Information Handbook* at 65 ("If the governmental body demonstrates that rule 503 applies to part of a communication, *generally* the entire communication will be protected.") (emphasis added, citing cases that set forth the



ordinary rule, not as applied to core public information under the Texas Public Information Act).

If the attorney-client privilege does apply to some portion of the Report and the privilege has not been waived, the entire Report cannot be withheld for the additional reason that at least portions of the Report are subject to other provisions of the Texas Public Information Act that require disclosure.

At least some, if not all, of the tennis pros at the Seay Center are independent contractors rather than employees. Tex. Gov't Code § 552.0222 has separate requirements for disclosure of contracting information, which includes “communications and other information sent between a governmental body [HPISD] and a vendor or contractor [Whitley Penn] related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.” Tex. Gov't Code § 552.003(1-a)(E). Section 552.0222(b)(4) also makes clear that information related to the performance of the tennis pros duties under a contract, as independent contractors, is also subject to disclosure including information related to breach of contract, remedial actions, and assessed damages. Importantly, Section 552.0222 is subject to the attorney-client privilege only to the extent that 552.107(1) applies under Subchapter C—552.0222 does not contain the “and not excepted from required disclosure unless made confidential under...other law” provision of 552.022(a) that allows the general application of the attorney-client privilege. Accordingly, as HPISD waived the attorney-client privilege under 552.107(1) by failing to timely seek decision by the Attorney General, at least all information related to the tennis pros in the Report must be disclosed because they are independent contractors pursuant to Section 552.0222. Tex. Gov't Code § 552.301(a)-(b) (setting mandatory timeline for seeking application of exceptions under Subchapter C); Tex. Att'y Gen. Op. OR2019-28665, 2019 WL 5488971 at \*2 (Oct. 11, 2019). At the very least, HPISD did not attempt to make a showing that

they meet the “compelling reason” standard of Section 552.302 as it relates to the facts of this critical public contracting information contained within the Report.

**IV. At Minimum, The District’s Motion for Summary Judgment Must Be Denied.**

Although the well-settled law cuts in favor of the Plaintiff, at minimum, the District’s Motion for Summary Judgment is inadequate. The sole issue addressed in the District’s Motion for Summary Judgment is whether the accounts at Whitley Penn were “lawyer’s representatives” when it drafted the Whitley Penn Report. But even assuming this was true—as argued above—even if Whitley Penn employed actual attorneys, the factual information that is included within the Whitley Penn report would still be subject to the Texas Public Information Act. Further, even if *any portion* of the Whitley Penn Report is protected by the attorney-client privilege, this is no basis to “deny all Petitioner’s requested relief” as HPISD requests. Mot. at 6. HPISD does not even *attempt* to refute the reasons the Report is discoverable, such as waiver of any attorney-client privilege, set forth in TPPF’s Original Complaint and here.

The Defendant’s motion for summary judgment—citing only one case—falls well below the summary judgment standard of Tex. R. Civ. P. 166a(c). For those reasons and the reasons mentioned above, the District’s motion for summary judgment must be denied. Further, a review of the evidence, set forth above, conclusively answers these questions, demonstrating that *TPPF* is the party entitled to summary judgment and the discovery of the Report. Accordingly, TPPF respectfully requests that their writ of mandamus be granted.

Respectfully submitted,

/s/Christian Townsend

ROBERT HENNEKE

TX Bar No. 24046058

rhenneke@texaspolicy.com

CHANCE WELDON  
TX Bar No. 24076767  
cweldon@texaspolicy.com  
CHRISTIAN TOWNSEND  
TX Bar No. 24127538  
ctownsend@texaspolicy.com  
TEXAS PUBLIC POLICY FOUNDATION  
901 Congress Avenue  
Austin, Texas 78701  
Telephone: (512) 472-2700  
Facsimile: (512) 472-2728  
*Attorneys for Plaintiff*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on all parties or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, on April 5, 2024.

Meredith Prykryl Walker  
[mwalker@wabsa.com](mailto:mwalker@wabsa.com)  
Crystal Hernandez  
[chernandez@wabsa.com](mailto:chernandez@wabsa.com)  
Walsh Gallegos Trevino Kyle &  
Robinson, PC  
105 Decker Court, Suite 700  
Irving, Texas 75062

/s/Christian Townsend  
CHRISTIAN TOWNSEND

# EXHIBIT 1

October 27, 2015

To: Tim Turner

From: Seay Tennis Center Concerned Park Cities Residents

The following issues need to be researched/investigated and resolved. All of these issues have been derived from multiple conversations with Park Cities' residents that are intimately familiar with the Highland Park Tennis Teams and the Seay Tennis Center. A number of these residents have students on the current or past tennis teams. Many of the residents are members of the Seay Tennis Center or previous members of the center. Several past employees of the Seay Tennis Center have come forward to discuss the inside workings of both the school tennis program and the center. We would appreciate a written response to our concerns.

For the fiscal year ended August 31, 2014 the Seay Tennis Center had \$698,000 in revenue and \$246,187 in profits. 85% of the expenses consisted of payroll. Less than 30% of the payroll went to tennis professionals for coaching. \$237,457 went to personnel that performed little or no coaching. Only two of the six highest paid individuals (out of a total of 32) drawing over 80% of the payroll compensation were full time coaches.

1. Dan Holden holds a teaching certificate. However, Dan Holden does not teach any classes. Dan Holden's involvement with the tennis program is a 45 minute session on most school days, Monday – Thursday, in season. Dan Holden attends team tournaments.
2. Dan Holden is in charge of the Seay Tennis Center and the Seay Tennis Center tennis programs including the high school programs as distinct from the high school tennis team. Dan Holden does not attend any training sessions and does not attend tournaments involving Seay Center participants.
3. Dan Holden maintains investments in a Memphis real estate company, Memphis Invest. He solicits others to invest in this company. His wife works with Memphis Invest.
4. Dan Holden maintains investments in used car dealerships along with Shannon Rodden, the Plano West coach.
5. Dan Holden employs tennis professionals to coach the various tennis programs including the high school tennis team. Students that utilize these professionals are required to pay approximately \$3000 annually for these services.
6. Five out of the top 6 female high school tennis team players have trained at T Bar M Racquet Club in their tennis academy. The tennis academy is directed by Ryan Haley.

# EXHIBIT 1

7. Tyler Jimenez works with the high school tennis team as an assistant coach. He also is the Junior Varsity coach. He also holds the title of the Director of Indoor Courts whatever that means. He joins Dan Holden for the daily 45 minute sessions in season Monday -- Thursday and also teaches a JV practice session 3 mornings weekly for one hour. He gives private lessons when he's not on duty. Tyler Jimenez invests in Memphis Invest.
8. Dixie Mabe is Director of Leagues of Seay Tennis Center. Any participant pays league fee of approximately \$80 for members and approximately \$140 for non members. Dixie also provides instruction in the junior program most afternoons for approximately 2-3 hours per day. Dixie also gives private lessons during the day and on weekends when he wasn't on duty. Dixie Mabe invests in Memphis Invest.
9. John Tallent is the Director Junior Programs whatever that means because he doesn't coach these programs. He is also the accountant and received all the funds and information regarding payments to post into a ledger. He in turn gives these funds over to Deborah Barnes who deposits under the supervision of Dan Holden. John Talent gave private lessons when he wasn't on duty. John Talent invests in Memphis Invest. John Tallent invests in the auto dealerships.
10. Deborah Barnes is in charge of the pro shop. The pro shop is owned by Deborah Barnes and Dan Holden. The shop is leased by Deborah Barnes for \$1 per year. She is the female team director. Deborah Barnes invests in Memphis Invest.
11. All of the tennis professionals conduct private lessons during the substantial amount of "free" time that exists as a result of minimal required duties. The professionals generally charge \$70-\$100 per hour. The professionals do not give up any portion of these fees to the high school/Seay Tennis Center to compensate for maintenance and overhead.
12. All revenues paid to the Seay Tennis Center must be paid in cash or check; credit cards are not allowed in spite of the obvious advantages in financial management and convenience. The accounting system for this cash is in question.
13. Tennis players in the Park Cities and outside of the Park Cities purchase an annual membership to use the Seay Tennis Center.
14. 27 tennis professionals are on the staff with no administrative duties. Generally the fees paid to these professionals are approximately \$10-\$15 per hour. These professionals also give private lessons when off duty.
15. A set of records was kept separately for cash and checks. Credit cards are only accepted for pro shop purchases. Because credit cards are not accepted all payments are made by cash or check. A credit card payment would be superior to cash or check in audit.
16. Systems are inadequate for documenting and supporting the flow of funds in the high school tennis programs and the Seay Tennis Center.

For compensation purposes the coaching tennis professionals were required to turn in daily time sheets. The non coaching tennis professionals turned in time sheets on a weekly or monthly basis. One of the professionals reported his hours were a "plug" figure used to arrive at an agreed sum.

# EXHIBIT 1

The non coaches under the direction of Dan Holden are compensated handsomely by the district and the Seay Tennis Center for a limited amount of work. Additional substantial compensation can also be earned through private lessons.

We are not opposed to individuals investing. ~~We are opposed if high school employees are investing and those activities cause a reduction in service per the responsibility of the position in the school tennis program.~~ We are concerned that the investing ventures as laid out, if true, are being financed by funds absconded from the cash circulating as discussed.

Furthermore if Dan Holden has encouraged his associates to invest in Memphis Vest and/or the auto dealerships and reaped financial gain from his actions we believe that is inappropriate.

## EXHIBIT 2

Dear Dr. Trigg, Mr. White, Mr. Ringo, Mrs. West, Mr. Hitzelberger, Mrs. Walker, Mrs. Michaels, Mr. Ellis, Mr. Herring, Mrs. Kelly, and Mr. Sharpe,

My name is Jason Holland and I've been the Director of the Elite program for the Seay Center for the last 5.5 years. I resigned from my job on Thursday June 4, 2020 solely due to the toxic job environment in which I found myself. I have truly loved my time here as a mentor for the kids, friend to fellow coworkers, and employee for the school. I have poured everything I have into my job and realize that I can no longer fulfill that obligation.

Dan Holden hired me to come here to change the HP Academy culture and to instill leadership and structure into a program that needed some renewal. He wanted me to create a blue collar, team -first mindset, as well as a strong work ethic into the Highland Park Tennis Academy. He recruited me with fervor due to my history of creating such environments in my six prior years as Associate Head Coach of Texas A&M Corpus Christi. It was a difficult beginning, but we eventually won the trust of both players and parents. Beyond any doubt, we absolutely have the most supportive, encouraging and inclusive environment for these kids to train anywhere in the state of Texas. We are graduating 13 seniors (from various schools) and sending 6 of them to play collegiate level tennis. This is a significant and measurable improvement over the years prior and clearly demonstrates the success of changes I made as the Seay Tennis Academy's Director. Ask the students and their parents, I am driven, honest, and fair, and that shows in the current success and commitment of our players.

I have fallen into disfavor. Perhaps it is because I am steadfast in my morality and cannot stand by to witness the clear manipulations and machinations of the Tennis Department that operates NOT for the good of the whole, but for the benefit of a very few in power. While I realize culture can't directly be measured, it can be felt, and the darker version of the behind-the-scenes culture is the reason that I am choosing to part ways with the Highland Park School District and the Seay Tennis Academy.

As educators, we are called to help grow students up, to provide an example of leadership, and to help provide a moral code of ethics for them to adopt as their own. THEY are our future leaders. Indeed, right now, in our country, people of power are being held accountable for their role, their leadership (lack thereof). There's an entire movement, *right now*, dedicated to the fact that people of power are abusing that power. The "little" people have finally had enough. Leaders are listening and finally making changes; *although HP seems to be the exception*. I have always heard such amazing things about Highland Park and what it has stood for, yet what I've seen over the last few years is simply *win at all costs*. There is no accountability, no moral standard, no code of ethics and no leadership within the tennis department. While I was hired to lead, it is clear that I really am only supposed to be a puppet for a corrupt branch of the Athletic Department, led by Dan Holden. If there are clear standards, I sure don't see them being enforced.

You've had coaches, former players, as well as parents, all give testimony and statements as to the affairs that go on unchecked and unpunished. Parents of both former and current players have confessed that they've always been afraid to speak up due to the fear of punishment being handed down to their child that was on the team or one that wished to be on the team. I do not want to have to

## EXHIBIT 2

provide a shopping list of the things I have observed. You have an open investigation that should be doing this, as we speak. However, I am concerned that if I do not list them, the wrongs will simply disappear, as they have before. I would also highly encourage you to ask for the HR emails between the employees and Brenda West to see what concrete information has been passed on through the correct chain. Nearly every employee has reported bad management and oversight to Human Resources, just as an indication, I have observed personally the following and have evidence to back it up: Dan not turning in court fees for indoor lessons taught; he claimed he was "exempt", shady financials that are completed in pencil, instructing desk personnel to keep people out while napping in locker room, enticing me while on school grounds into a \$40K financial investment as my supervisor (which regrettably I agreed to), giving financial discounts to certain players when we clearly state that we do not do that, a nearly 2 hour long *recorded* conversation where my job, salary and benefits were clearly threatened, forgery of time sheets with documentation to back it up, countless emails, phone calls and meetings by parents voicing concerns, an open confession to not running intense practices due to other academies training their players, allegations of workplace harassment that went unreported by Dan, ignored allegations of sexual harassment amongst employees and multiple allegations of bullying on his team ignored by Dan and not reported. I have gone by the book to report all. *There is no incentive for me to write about any of this.* Yet I am (and others are) still seeing a blind eye turned to the dozens of complaints that have been brought forth. *How can the voices of so many be ignored?* You've allowed a dictator to rule over the tennis program for 20 years now. Where is his oversight?

We have been told most recently that some of this is because Dan wasn't given clear duties or training. Really? For 20 years he has been here and still he has not been given any delineation of duties or training on bullying or harassment? If an employee has to be told to be fair, honest and to treat people with respect, then it is obvious to me that you have made a critical error in keeping such an employee.

I'm not going to sit here and beat my own drum, but you are losing an employee who has cared and uplifted these kids to the standards I assumed and had heard that HP bragged of and maintained. I have loved teaching and mentoring with all my heart but, due to what I've seen and how we've all been treated, I'm walking away from tennis. I believe it would take nothing less than a tennis riot to get leaders to listen to what we've been saying all along. I have also attached a letter that was sent to Human Resources last year that also relays that the same patterns were observed by a former Director of Tennis. Again, I remind you, we both have no incentive to write or to tell any of this.

This. Isn't. Right.

Something is either very corrupt, or this place is simply afraid to admit when it has a problem. That's not where America is right now, and it's certainly not the culture that I want to be a part of anymore. The kids deserve better, the employees deserve better and the school deserves better.

I thank you for the opportunity and privilege to have worked with these kids and to have been in a leadership position for them. I can only hope that Highland Park doesn't continue to let people who truly care about these kids get pushed out while enabling those who are in it for themselves.

I truly hope you will think carefully about what I have taken time to write. I hope and trust, as leaders of such an esteemed school district, you will do so; you are, actually, entrusted and responsible for doing so.



Jason Holland 361-510-1953



# Highland Park Independent School District Dallas, TX



**Comprehensive Annual Financial Report  
for the fiscal year ended Aug. 31, 2020**

## **EXHIBIT 3**

**Mary Elise Krazovec**  
Grade12  
Highland Park High School  
*Fireflies*

## EXHIBIT 3

# Highland Park Independent School District Dallas, Texas

Comprehensive Annual Financial Report  
For the Fiscal Year Ended August 31, 2020



Prepared by:  
Business Services Department & Finance

Chase Park  
Director of Finance

Mr. Mike White, RTSBA  
Assistant Superintendent  
For Business Services

# EXHIBIT 3

## Highland Park Independent School District Statement of Activities For the Fiscal Year Ended August 31, 2020

Data Control Codes		1	Program Revenues	
			3	4
		Expenses	Charges for Services	Operating Grants and Contributions
	<b>GOVERNMENTAL ACTIVITIES</b>			
11	Instruction	\$ 51,410,329	\$ 2,207,551	\$ 10,669,034
12	Instructional resources and media services	1,400,664	93,234	197,951
13	Curriculum and staff development	878,543	11,536	430,137
21	Instructional leadership	1,849,560	18,784	496,449
23	School leadership	4,730,492	69,893	431,460
31	Guidance, counseling, and evaluation services	4,115,605	67,001	337,229
33	Health services	703,537	9,935	60,664
34	Student transportation	536,934	-	-
35	Food service	2,035,917	29,658	1,624,677
36	Extracurricular activities	3,145,503	847,310	391,640
41	General administration	3,687,332	38,556	231,321
51	Plant maintenance and operations	7,261,478	521,831	514,474
52	Security and monitoring services	1,273,061	3,955	29,238
53	Data processing services	1,918,388	15,818	148,704
61	Community services	130,884	-	24,878
72	Interest on long-term debt	13,957,179	-	-
73	Debt Service - bond issuance costs and fees	3,000	-	-
81	Other facility costs	42,865	238,007	8,056
91	Contracted instructional services between schools	100,511,018	-	-
95	Juvenile and justice education programs	3,000	-	-
99	Other intergovernmental charge	635,302	-	-
[TG]	<b>TOTAL GOVERNMENTAL ACTIVITIES</b>	<b>200,230,591</b>	<b>4,173,069</b>	<b>15,595,912</b>
	<b>BUSINESS-TYPE ACTIVITIES</b>			
01	Seay Tennis Center	657,600	761,832	-
02	Academy for Lifelong Learning	435,124	590,416	-
[TB]	<b>TOTAL BUSINESS-TYPE ACTIVITIES</b>	<b>1,092,724</b>	<b>1,352,248</b>	<b>-</b>
[TP]	<b>TOTAL PRIMARY GOVERNMENT</b>	<b>\$ 201,323,315</b>	<b>\$ 5,525,317</b>	<b>\$ 15,595,912</b>
	<b>COMPONENT UNIT</b>			
03	Highland Park I.S.D. Education Foundation	\$ 4,268,237	\$ -	\$ 3,549,785

### Data Control Codes

	General revenues and transfers
	Taxes
MT	Property taxes, levied for general purposes
DT	Property taxes, levied for debt service
GC	Grants & contributions not restricted
IE	Investment earnings
MI	Miscellaneous local and intermediate revenue
FR	Transfers
TR	Total general revenues and transfers
CN	Change in net position
NB	Net position - beginning
NE	Net position-ending

The Notes to the Basic Financial Statements are an integral part of this statement.



# Highland Park Independent School District Dallas, Texas



Annual Comprehensive Financial Report  
for the fiscal year ended August 31, 2021

## **EXHIBIT 4**

**Doug Cooper**  
Grade3  
University Park Elementary School  
*Olympic Inspired Kimono*

## EXHIBIT 4

# Highland Park Independent School District Dallas, Texas

Annual Comprehensive Financial Report  
For the Fiscal Year Ended August 31, 2021



Prepared by:  
Business Services Department & Finance

Chase Park  
Director of Finance

Mr. Mike White, RTSBA  
Assistant Superintendent  
For Business Services



# EXHIBIT 4

## Highland Park Independent School District Statement of Activities For the Fiscal Year Ended August 31, 2021

Data Control Codes	1	Program Revenues	
		3	4
	Expenses	Charges for Services	Operating Grants and Contributions
<b>GOVERNMENTAL ACTIVITIES</b>			
11 Instruction	\$ 49,234,037	\$ 2,311,495	\$ 9,828,387
12 Instructional resources and media services	1,214,648	68,696	106,163
13 Curriculum and staff development	857,237	9,168	348,972
21 Instructional leadership	2,034,490	21,106	460,329
23 School leadership	4,250,821	74,946	279,799
31 Guidance, counseling, and evaluation services	3,987,551	63,191	218,982
33 Health services	743,786	11,109	43,478
34 Student transportation	477,473	-	-
35 Food service	1,921,463	33,326	1,635,106
36 Extracurricular activities	3,588,015	821,425	604,731
41 General administration	3,263,669	43,322	157,336
51 Plant maintenance and operations	8,702,418	531,824	237,842
52 Security and monitoring services	1,278,042	4,443	148,483
53 Data processing services	1,665,496	17,774	119,615
61 Community services	318,746	-	22,949
72 Interest on long-term debt	13,274,557	-	-
73 Debt Service - bond issuance costs and fees	3,000	-	-
81 Other facility costs	34,366	-	82,011
91 Contracted instructional services between schools	104,857,894	-	-
95 Juvenile and justice education programs	3,000	-	-
99 Other intergovernmental charge	628,215	-	-
[TG] <b>TOTAL GOVERNMENTAL ACTIVITIES</b>	<b>202,338,924</b>	<b>4,011,825</b>	<b>14,294,183</b>
<b>BUSINESS-TYPE ACTIVITIES</b>			
01 Seay Tennis Center	1,615,763	1,902,224	-
02 Academy for Lifelong Learning	381,177	365,890	-
[TB] <b>TOTAL BUSINESS-TYPE ACTIVITIES</b>	<b>1,996,940</b>	<b>2,268,114</b>	<b>-</b>
[TP] <b>TOTAL PRIMARY GOVERNMENT</b>	<b>\$ 204,335,864</b>	<b>\$ 6,279,939</b>	<b>\$ 14,294,183</b>
<b>COMPONENT UNIT</b>			
03 Highland Park I.S.D. Education Foundation	\$ 3,709,092	\$ -	\$ 3,680,066

### Data Control Codes

	General revenues and transfers
	Taxes
MT	Property taxes, levied for general purposes
DT	Property taxes, levied for debt service
GC	Grants & contributions not restricted
IE	Investment earnings
MI	Miscellaneous local and intermediate revenue
FR	Transfers
TR	Total general revenues and transfers
CN	Change in net position
NB	Net position - beginning
PA	Cummulative effect of change in accounting principle
NB	Net position - beginning, as restated
NE	Net position-ending

The Notes to the Basic Financial Statements are an integral part of this statement.



## EXHIBIT 5



Dallas Office  
8343 Douglas Avenue  
Suite 400  
Dallas, Texas 75225  
214.393.9300 Main

whitleypenn.com

August 6, 2019

Bryan P. Neal, Partner  
Thompson and Knight LLP  
One Arts Plaza  
1722 Routh Street  
Suite 1500  
Dallas, Texas 75201

Re: Highland Park ISD

Dear Mr. Neal:

Whitley Penn is pleased to have been retained by your firm, Thompson & Knight LLP, on behalf of your client, Highland Park Independent School District (referred to as the "client" or "HPISD"), to assist you with an attorney investigation of certain allegations.

We understand that we are acting as a representative of you in your role of providing legal advice to the client, as well as addressing anticipated litigation that may arise related to the allegations at issue, and that our role therefore will be subject to the attorney/client and work product privileges. Accordingly, any information we obtain in connection with this engagement or that we develop or communicate to you will be regarded as confidential and will not be disclosed to any third party except upon express authorization by you or an order from a court. Please further refer to the attached Privacy Policy.

Although they may change somewhat through mutual discussion, our primary responsibilities will be to work with you to (1) review documentation concerning the conduct of certain employees with respect to financial matters related to the Seay Tennis Center (STC); (2) work with you to interview, or consult as to the topics of interviews to be conducted by you or others of, certain HPISD employees or former employees associated with STC; and (3) develop the report described below.

Whitley Penn is not licensed to practice law; we will not give legal advice. Unless requested and covered under a separate engagement letter, we will not perform an audit or accounting review, or prepare compilations on any financial data for any business entities related to this engagement.

We will document the results of our findings in a written report directed only to you and marked "CONFIDENTIAL." It is the parties' intention that the report be and remain privileged. We understand that the applicable legal privileges are subject to waiver and can be challenged in

## EXHIBIT 5

court and that it is therefore possible that the report would be disclosed at some point, though that is not the present intention. In light of that possibility, we will make it clear in our report that the findings, opinions, and other statements in the report are intended for the sole and exclusive use of you and the client and are not to be relied on by any third party.

Neither party anticipates that we will provide testimony concerning the report or our work under this engagement. Should that change we will discuss the terms of such testimony and document any needed modification of this engagement.

HPISD will be responsible for paying our fees for all services performed in connection with this engagement. Invoices will be directed to you at Thompson & Knight LLP and may at your option be paid directly by Thompson & Knight LLP or forwarded by you to the client for direct payment by the client. We agree to send invoices to you by e-mail to facilitate the process. Further, if we are directed to begin any work prior to the date this engagement letter is signed, the client responsible for the payment of those fees. Following the commencement of work on this project, fees and expenses will be billed monthly and are due upon presentation of statements.

In investigatory work, estimating future costs and expenses is difficult. If we provide a budget of fees and expenses, it is only an estimate. Our work will be billed per hour at the professional fee rate effective at the time work is being performed. The current hourly rates range from \$170 to \$445 subject to review and adjustments periodically. In addition to this hourly fee, direct out of pocket expenses, including credit card and wire fees, will be billed at cost. Failure to make the payments required by this agreement, or failure by us, you, and/or your client to comply with the terms of this agreement will release one another from this agreement and any further work on your clients' behalf. The client will remain responsible for any unpaid balance.

All outstanding invoices must be paid before we issue or release our final report. In the event our report is issued and released without full payment of invoices and requested retainers, such is not a waiver to right to full payment of all funds due. Upon release of our report the client hereby consents to pay in full all accrued charges. If for any reason the engagement is terminated prior to its consummation and we are requested to terminate work, then our fee shall not be less than our total time and costs at the normal rate for such projects, plus out-of-pocket expenses.

All payments are due as of the billing date shown on the monthly statements, and are payable upon presentation in Dallas County. A 1% monthly late charge will be added to all accounts thirty days or more past due. Any payments on past-due statements shall be first applied to the oldest outstanding statement, including any due and unpaid interest.

If at any time during the course of this engagement a payment is more than forty-five days past due, we may discontinue work until such account is current, terminate the engagement (which will still require the payment in full for our services), or require a signature on a promissory note to secure the payment of any outstanding balance. Your client must agree to perform any and all obligations on such a promissory note as part of this engagement.

## EXHIBIT 5

In the unlikely event differences concerning our services or fees should arise that are not resolved by mutual agreement, to facilitate judicial resolution and save time and expense of all parties, Thompson and Knight LLP and/or Highland Park ISD and Whitley Penn agree not to demand a trial by jury in any action, proceeding, or counterclaim arising out of or relating to our services and fees for this engagement. Any controversy, dispute, or questions arising out of or in connection with this agreement or our engagement shall be determined by arbitration in Dallas County, Texas (or other mutually agreed county within Texas) conducted in accordance with the rules of the American Arbitration Association, and any decision rendered by the American Arbitration Association shall be binding on both parties to this agreement. The costs of any arbitration shall be borne equally by the parties. Any and all claims in arbitration relating to or arising out of this contract/agreement shall be governed by the laws of the State of Texas and to the extent any issue regarding the arbitration is submitted to a court, including the appointment of arbitrators or confirmation of an award, the District courts in Dallas County shall have exclusive jurisdiction. Any action arising out of this agreement or the services provided shall be initiated within two years of the service provided.

This letter replaces and supersedes any previous proposals, correspondence, and understanding, whether written or oral. The agreement contained in this engagement letter shall survive the completion or termination of this engagement. This agreement is binding and states the full agreement, unless amended in writing signed by both parties.

Either you, your client, or our firm may terminate this engagement at any time upon written notice. In the event of termination, we will be compensated for our time and fees incurred up to the date of termination.

If these terms and conditions are acceptable to you and/or your client, please confirm our agreement by signing and returning a copy of this letter. Should you have any questions regarding our proposed services, please do not hesitate to contact us at (214) 393-9430.

Your signature below is authorization for us to proceed under the terms of this proposal.

Sincerely yours,

*Whitley Penn LLP*

☒ HPISD accepts responsibility for the payment of Whitley Penn fees under this engagement letter.

ACCEPTED this 7 day of AUGUST, 2019.

## EXHIBIT 5

### Law Firm Acceptance:

Attorney Name: Bryan P. Neal

Signature: 

Title: Partner

Law Firm: Thompson & Knight LLP

### Client Acceptance:

Client Name: MIKE WHITE

Signature: 



# EXHIBIT 5

## Privacy Policy

CPAs, like all providers of personal financial services, are now required by law to inform their clients of their policies regarding privacy of client information. CPAs have been, and continue to be, bound by professional standards of confidentiality that are even more stringent than those required by law. Therefore, we have always protected your right to privacy.

### **Types of Nonpublic Personal Information We Collect**

We collect nonpublic personal information about you that is provided to us by you or obtained by us with your authorization.

### **Parties to Whom We Disclose Information**

For current and former clients, we do not disclose any nonpublic personal information obtained in the course of our practice except as required or permitted by law. Permitted disclosures include, for instance, providing information to our employees, and in limited situations, to unrelated third parties who need to know that information to assist us in providing services to you. In all such situations, we stress the confidential nature of information being shared. Unless otherwise noted, we may distribute information to you via facsimile or e-mail to the numbers and addresses provided to us by you.

### **Protecting the Confidentiality and Security of Current and Former Clients' Information**

We retain records relating to professional services that we provide so that we are better able to assist you with your professional needs and, in some cases, to comply with professional guidelines. In order to guard your nonpublic personal information, we maintain physical, electronic and procedural safeguards that comply with professional standards.

### **Disposing of Confidential Current and Former Clients' Information**

We engage the services of a document destruction company for the shredding of hard copies of confidential documents and information. Additionally, we delete electronic data files that have been retained in accordance with our record retention policy.

\*\*\*\*\*

Your privacy, our professional ethics, and the ability to provide you with quality financial services are very important to us.

Whitley Penn

# EXHIBIT 6

Cause No. DC-23-01161

TEXAS PUBLIC POLICY  
FOUNDATION,

Plaintiff,

v.

HIGHLAND PARK INDEPENDENT  
SCHOOL DISTRICT,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

14TH JUDICIAL DISTRICT

## **DEFENDANT’S FIRST AMENDED OBJECTIONS AND RESPONSES TO PLAINTIFF’S FIRST REQUESTS FOR INTERROGATORIES**

TO: Plaintiff, Texas Public Policy Foundation, by its attorneys of record, Robert Henneke, Chance Weldon, and Christian Townsend, Texas Public Policy Foundation, 901 Congress Avenue, Austin, Texas 78701.

Defendant Highland Park Independent School District (Highland Park ISD or the District) submits to Plaintiff Texas Public Policy Foundation (TPPF or Plaintiff) its First Amended Objections and Responses to Plaintiff’s First Requests for Interrogatories as follows:

### **OBJECTIONS AND RESPONSES**

**INTERROGATORY NO. 1:** Describe any legal actions taken by Highland Park as a direct consequence of the Whitley Penn Report.

**ANSWER:** Objection. The District objects to this request as vague and overly broad. The phrase “any legal actions” is vague, ambiguous, subjective and open to varying interpretations and does not provide a clear expectation of the information being requested, rendering the question incapable of being answered. The District states that it did not file any lawsuits or take any other direct “legal” action, in court or otherwise, as a result of having received the Whitley Penn Report.

**INTERROGATORY NO. 2:** List all other instances when Whitley Penn’s services have been rendered for Highland Park or for Holland and Knight at the request of Highland Park.

**ANSWER:** Objection. The District objects to this request as irrelevant and not reasonably tailored to lead to the discovery of admissible information. Any instances where Whitley Penn was retained by Highland Park ISD that do not pertain to the Whitley Penn Report presently at issue are not relevant to the claims pertinent to this lawsuit. Accordingly, the interrogatory, as currently written, does not reflect a relevant request for information. The District also objects to this request as overly

## EXHIBIT 6

broad, unduly burdensome, and not sufficiently limited in time and scope. The District states Whitley Penn has not rendered services for Holland & Knight on behalf of Highland Park ISD. The District will supplement this response.

**INTERROGATORY NO. 3:** If your response to Request for Admission 1 was anything other than an unqualified admission, please state your reasoning for that response.

**ANSWER:** The District objects to Admission No. 1 as it calls for a legal conclusion. The District likewise objects to this interrogatory on the same basis. The District submitted a public information act request to the Texas Attorney General regarding the Whitley Penn Report. The Texas Attorney General determined the Whitley Penn Report was excepted from disclosure under the Texas Public Information Act.

**INTERROGATORY NO. 4:** If your response to Request for Admission 2 was anything other than an unqualified admission, please state your reasoning for that response.

**ANSWER:** The District objects to Admission No. 2 as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The District likewise objects to this interrogatory on the same basis. The issue before the Court is whether the Whitley Penn Report is protected by the attorney-client privilege. This singular issue does not entitle Plaintiff to go on a fishing expedition regarding any complaints regarding alleged violations of District policy. To that end, as written, Request for Admission 2 broadly seeks any violations of HPISD policies by any individual at the Seay Tennis Center, regardless of whether or not the alleged violation was recorded in the Report. Plaintiff merely speculating that the Report conceals fraud does not entitle it to information outside of the scope of the dispute in this lawsuit, which is whether HPISD was entitled to withhold the Report under the Public Information Act. Additionally, violations of HPISD policies would not be relevant to any purported waiver of attorney client privilege, as Plaintiff's petition does not allege that Whitley Penn or Holland & Knight were obtained to enable or aid HPISD to commit or plan to commit what HPISD knew or reasonably should have known to be a crime or fraud.

**INTERROGATORY NO. 5:** If your response to Request for Admission 3 was anything other than an unqualified admission, please state your reasoning for that response.

**ANSWER:** The District denies Admission No. 3 as it is not accurate. The District has not had any contact with Whitley Penn regarding the Whitley Penn Report. Holland & Knight LLP engaged Whitley Penn to assist Holland & Knight in providing legal advice to the District.

**INTERROGATORY NO. 6:** If your response to Request for Admission 4 was anything other than an unqualified admission, please state your reasoning for that response.

**ANSWER:** As outlined in response to Request for Admission 4, Whitley Penn was engaged by Holland & Knight LLP to assist Holland & Knight to provide legal advice to the District. To that end, the District contends that any factual statement included in the Report would have been incorporated to aid in the purpose of rendition of legal services, and would likewise be protected

## EXHIBIT 6

from disclosure, as the District contends the Report is protected by the attorney-client privilege in its entirety.<sup>1</sup> The Whitley Penn Report is not solely a factual communication to Holland & Knight or the District.

**INTERROGATORY NO. 7:** If your response to Request for Admission 5 was anything other than an unqualified admission, please state your reasoning for that response.

**ANSWER:** Whitley Penn was engaged by Holland & Knight LLP to assist Holland & Knight to provide legal advice to the District. The District admits that at least one person from Whitley Penn who performed the investigation is not an attorney. The District lacks information to enable it to admit or deny whether any individuals from Whitley Penn “who worked on the Report” are attorneys. The District also objects to this Request as it is not relevant whether or not individuals from Whitley Penn are attorneys, because the attorney-client privilege in this instance is principally tied to Holland & Knight LLP, and Whitley Penn was assisting Holland & Knight LLP in rendering legal advice.

**INTERROGATORY NO. 8:** If your response to Request for Admission 6 was anything other than an unqualified admission, please state your reasoning for that response.

**ANSWER:** The District objects to Admission No. 6 as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The issue before the Court is whether the Whitley Penn Report is protected by the attorney-client privilege. Plaintiff is not prematurely entitled to information that, if it exists, would be contained inside the Report because of its protection under the attorney-client privilege. Additionally, this singular issue does not entitle Plaintiff to go on a fishing expedition regarding any complaints regarding the employment status of tennis pros at the Seay Tennis Center. The District likewise objects to this interrogatory on the same basis.

**INTERROGATORY NO. 9:** If your response to Request for Admission 7 was anything other than an unqualified admission, please state your reasoning for that response.

**ANSWER:** The District objects to Admission No. 7 as vague in that the District cannot reasonably determine what information Plaintiff is seeking. The District likewise objects to this interrogatory on the same basis. The District did not retain Whitley Penn to complete the Whitley Penn Report. The Report was provided to Holland & Knight LLP.

---

<sup>1</sup> See *Univ. of Tex. Sys. v. Franklin Ctr. for Gov't & Pub. Integrity*, 675 S.W.3d 273 (Tex. 2023).



## EXHIBIT 6

Respectfully submitted,

By: /s/Meredith Prykryl Walker  
Meredith Prykryl Walker  
State Bar No. 24056487  
Crystal Hernandez  
State Bar No. 24132604

WALSH GALLEGOS TREVIÑO  
KYLE & ROBINSON P.C.  
105 Decker Court, Suite 700  
Irving, Texas 75062  
214.574.8800  
214.574.8801 (facsimile)  
[mwalker@wabsa.com](mailto:mwalker@wabsa.com)  
[chernandez@wabsa.com](mailto:chernandez@wabsa.com)

ATTORNEYS FOR DEFENDANT  
HIGHLAND PARK INDEPENDENT  
SCHOOL DISTRICT

### **CERTIFICATE OF SERVICE**

The undersigned certifies that on this 15th day of February 2024, a true and correct copy of the above and foregoing document was served upon the following counsel of record for Plaintiffs in accordance with the Texas Rules of Civil Procedure:

Robert Henneke  
Chance Weldon  
Texas Public Policy Foundation  
901 Congress Avenue  
Austin, Texas 78701

/s/Meredith Prykryl Walker  
Meredith Prykryl Walker

## EXHIBIT 7

**From:** Michael White <WhiteM@HPISD.ORG>  
**Sent:** Monday, March 29, 2021 12:10 PM  
**To:** [REDACTED]  
**Cc:** Neal, Bryan P.; Brenda West; Thomas Trigg  
**Subject:** Follow Up - Seay Tennis Center

Mr. [REDACTED]

I am responding on behalf of the Administration to your recent emails to Board President Jim Hitzelberger. As you know, I am the Administration official charged by the Superintendent with direct oversight of the Seay Tennis Center. I believe that we have previously discussed your concerns in our lengthy phone conversations, but I will attempt here to respond to the points mentioned in your recent emails.

As to allegations or rumors about the Seay Tennis Center, please know that the District's attorneys (copied on this email) conducted a thorough investigation, which included reviewing all of the types of documentation that you mention and doing so with expert assistance. Afterwards, the District took all steps it believed were appropriate, including revamping the Seay Tennis Center organization and management structure. If there are additional actions that you might have desired or expected but that did not occur, it is because we did not think they were the best approach.

The changes with Seay began almost a year ago and have been in place for some time now. From our perspective, we have fully, finally, and properly addressed any needed significant organizational or management changes. We are managing the Center in a way that we are comfortable is best for the District. As always, there may be adjustments made as we become more accustomed to the new structure, but as of now we believe we are where we need to be. Further, to address some of the comments in your earlier emails, there is no mismanagement occurring, there is no malfeasance occurring, and there are no funds being misdirected or mismanaged.

We do appreciate the interest by you and others in the Seay Tennis Center and hope you will trust that the management decisions we have made are what we believe are in the best interests of the District.

Thanks,

**Mike White, RTSBA**  
Assistant Superintendent for Business Services  
Highland Park ISD  
7015 Westchester Drive  
Dallas, TX 75205  
(214) 780-3017 Work  
(972) 533-3428 Cell

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Christian Townsend on behalf of Christian Townsend

Bar No. 24127538

ctownsend@texaspolicy.com

Envelope ID: 86373087

Filing Code Description: Motion - Summary Judgment

Filing Description: Plaintiff's Motion for Summary Judgment & Response to Defendant's Motion for Summary Judgment

Status as of 4/8/2024 11:25 AM CST

Associated Case Party: TEXAS PUBLIC POLICY FOUNDATION

Name	BarNumber	Email	TimestampSubmitted	Status
Christian Townsend		ctownsend@texaspolicy.com	4/5/2024 5:48:49 PM	SENT

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Christy Spring		cspring@wabsa.com	4/5/2024 5:48:49 PM	SENT
Yvonne Simental		ysimental@texaspolicy.com	4/5/2024 5:48:49 PM	SENT
Robert Henneke		rhenneke@texaspolicy.com	4/5/2024 5:48:49 PM	SENT
Anjela Young		ayoung@wabsa.com	4/5/2024 5:48:49 PM	SENT
Chance DWeldon		cweldon@texaspolicy.com	4/5/2024 5:48:49 PM	SENT
Meredith Walker		mwalker@wabsa.com	4/5/2024 5:48:49 PM	SENT
Jerome Patterson		jpatterson@wabsa.com	4/5/2024 5:48:49 PM	SENT
Crystal Hernandez		chernandez@wabsa.com	4/5/2024 5:48:49 PM	SENT