NO. 08-0172

In the Supreme Court of Texas

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS,

Petitioner,

v.

ATTORNEY GENERAL OF TEXAS and
The DALLAS MORNING NEWS, L.P.

Respondents.

RESPONDENT ATTORNEY GENERAL'S RESPONSE TO PETITIONS FOR REVIEW

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REPLY TO ISSUES PRESENTED

Reply to First Issue

The date of birth of a state employee is not confidential under the PIA.

Reply to Second Issue

The Court of Appeals did not abuse its discretion in denying attorney fees to *The News*, and no reversible error requires review by the Court.

TO THE HONORABLE SUPREME COURT OF TEXAS

Respondent Greg Abbott, Attorney General of Texas, files this response to the Petition for Review of the Texas Comptroller of Public Accounts and the Cross-Petition for Review of *The Dallas Morning News*.

SUMMARY OF THE ARGUMENT

The Court of Appeals correctly applied Texas law in holding that dates of birth of state employees are public information subject to disclosure under the Public Information Act (PIA). The Comptroller is asking the Court to rule that the dates of birth of state employees are confidential by law, without providing any legal authority to support such a ruling. In fact, Petitioner is asking the Court to change its test for determining if information is protected under common law privacy by throwing out the threshold requirement that information has to be "highly intimate and embarrassing."

A court is not allowed "in its discretion to deny disclosure even though there is no specific exception provided." *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 682 (Tex. 1976). Under section 552.101 of the PIA, confidentiality must be based on a statute, constitutional provision, or a judicial decision. None of these sources make the date of birth of a state employee confidential. While other jurisdictions may consider date of birth to be confidential, those jurisdictions apply a different standard than that used in Texas. None of the cases or statutes cited by the Comptroller are authority for withholding the dates of birth under the PIA. The Comptroller's arguments are policy arguments that are more properly made to the Legislature.

The Court of Appeals correctly ruled on *The Dallas Morning News'* (*The News)* claim for attorney fees, in favor of the Comptroller. The Comptroller is not dissatisfied with the holding, only with the reasoning of the Court of Appeals. The Comptroller is not prejudiced by the holding. *The News* conditioned its cross-petition for review on the Comptroller's seeking review of the Court of Appeals' disposition of the attorney fee issue. Under these circumstances, there is no controversy over attorney fees in this case. The Comptroller is seeking an advisory opinion. Neither petitioner has demonstrated an error of importance to the jurisprudence of this state.

ARGUMENT

Common law privacy

Reply to First Issue (restated)

The date of birth of a state employee is not confidential under the PIA.

1. Texas common law privacy does not make state employees' dates of birth confidential.

Common law privacy protects only highly intimate or embarrassing information about one's personal life, the disclosure of which would be highly objectionable to a reasonable person. *Industrial Found.*, 540 S.W.2d at 682, 685. The Court of Appeals correctly held that the Comptroller did not meet this threshold test. *Texas Comptroller of Pub. Accounts v. Attorney General of Texas*, 244 S.W.3d 629, 639 (Tex.App.–Austin 2008, pet. filed). The Comptroller continues to apply the wrong law and test in her effort to have the dates of birth of state employees withheld. Before this Court, the Comptroller seeks to bring dates of birth

under every recognized privacy interest, no matter how tenuous their applicability to dates of birth is or whether a claim has been properly preserved for appellate review. *See* Comptroller's Pet. 2, 8.[1]

> The Court of Appeals discussed the scope of common law privacy in Texas:
>
> > Texas courts recognize three separate types of invasion of privacy: (1) intrusion upon one's seclusion or solitude or into one's private affairs, (2) public disclosure of embarrassing private facts, and (3) wrongful appropriation of one's name or likeness. [footnote omitted] *See Cain v. Hearst Corp.,* 878 S.W.2d 577, 578 (Tex.1994); *Industrial Found. of the South v. Texas Indus. Accident Bd.,* 540 S.W.2d 668, 682 (Tex.1976) (quoting William L. Prosser, *Privacy,* 48 Cal. L.Rev. 383, 389 (1960)).

Texas Comptroller, 244 S.W.3d at 635.

a. Disclosure of date of birth is not an unwarranted intrusion.

Petitioner claims that this case is governed by the first interest, the freedom from unwarranted intrusion into one's private affairs. *See* Comptroller's Pet. 8, 9-11. There is no legal or factual basis for such a claim, and the Comptroller provides none. The Comptroller never explains how disclosure of a public employee's date of birth pursuant to the PIA is an intrusion upon the employee's seclusion, solitude, or private affairs. As explained by the Court of Appeals, an intrusion upon seclusion usually requires a physical invasion of a person's property, or eavesdropping. *Texas Comptroller*, 244 S.W.3d at 636. The core of

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[1]The Comptroller did not assert the first or third interests recognized under common law privacy as grounds for summary judgment. In the Comptroller's motion for summary judgment, the Comptroller noted that privacy protects against appropriation of one's "identity" and referred to an "unreasonable intrusion" in the context of her bare claim that constitutional privacy protected the information at issue. CR 89, 90-91, Comptroller's Cx-MSJ. Tex. R. App. P. 33.1 (error not presented in trial court may not be raised on appeal).

this claim is the offense of prying into the private domain of another, not publication of the results of such prying. *Blanche v. First Nationwide Mortg. Corp.*,74 S.W.3d 444, 455 (Tex.App.–Dallas 2002, no pet.). The Comptroller cites to *Billings v. Atkinson*, 489 S.W.2d 858 (Tex. 1973), the first case to recognize the tort of invasion of privacy and to apply the test for unwarranted intrusion upon seclusion. *See* Comptroller's Pet. 9. In arguing for an extension of common law privacy to dates of birth, Petitioner notes that before *Billings*, Texas common law did not recognize an action for wiretapping under common law privacy. Comptroller's Pet. 9. That is true, but until *Billings*, Texas did not recognize any cause of action based on common law privacy. *Billings*, 489 S.W.2d at 859-60; *see also Diamond Shamrock Refin. & Mktg. Co. v. Mendez*, 844 S.W.2d 198, 204 (Tex. 1992). The Court, in *Billings*, did not expand common law privacy to include an action against wiretapping or eavesdropping. It adopted the principles of privacy and allowed recovery for actions that met the elements of invasion of privacy, which wiretapping did. *Billings*, 489 S.W.2d at 858-61. Petitioner's claim does not meet the elements of an unwarranted intrusion.

b. Disclosure of date of birth is not a misappropriation of one's name or likeness.

The Comptroller also claims that disclosure of a state employee's date of birth implicates the third interest protected under common law privacy, freedom from "appropriation, for the defendant's advantage, of the plaintiff's name or likeness." Comptroller's Pet. 8; *see Industrial Found.*, 540 S.W.2d at 682. The Comptroller did not raise this claim before the trial court or the Court of Appeals. *See Texas Comptroller*, 244

S.W.3d at 635 n.4 (concluding that the Comptroller had conceded that wrongful appropriation did not apply to this case since she had not cited any legal authorities or the record in support of such a claim). Petitioner characterizes this tort as protection against "appropriation of [an individual's] name or identity." Comptroller's Pet. 13. No case is cited in support of this characterization.

Misappropriation of a person's name or *likeness* appears to be the least developed area of Texas common law privacy. *Kimbrough v. Coca-Cola USA*, 521 S.W.2d 719 (Tex.Civ.App.–Eastland 1975, writ ref'd n.r.e.) is the first case to recognize such a tort and remains the lead Texas case to discuss this tort in any detail. *See Diamond Shamrock*, 844 S.W.2d at 205 n.4 (noting *Kimbrough* as the only Texas case to recognize tort). Petitioner is urging the Court to recognize a PIA claim under this theory, without any supporting authority. The Eastland Court of Appeals held that Texas recognized "a cause of action for the unauthorized appropriation or exploitation of [plaintiff's] name and likeness by the defendants" who used his likeness and name in a Coca Cola advertisement. *Kimbrough*, 521 S.W.2d at 722. It is generally associated with commercial exploitation. *Diamond Shamrock*, 844 S.W.2d at 205; *Kimbrough*, 521 S.W.2d at 721-22. Petitioner has not even attempted to apply the law to the facts of this case and explain how disclosure of public information, the dates of birth of state employees, impinges on this privacy interest.

c. Date of birth is not highly intimate or embarrassing information.

Three years after *Billings*, the Court set out the test for a claim of common law privacy

in the context of a request for information under the PIA. *See Industrial Found.*, 540 S.W.2d at 682, 685. Disclosure of embarrassing private facts under the PIA concerns the second interest protected under common law privacy, and it is the test for that interest that is applied in PIA cases. *Id.* at 682-85. The Court's test is far from being stale and in need of reconstruction. It is alive and well today in claims under the PIA, as well as in tort actions. *See Blanche v. First Nationwide Mortg. Corp.*,74 S.W.3d 444, 454 (Tex.App.–Dallas 2002, no pet.) (tort claim); *Thomas v. El Paso County Cmty College Dist.*, 68 S.W.3d 722, 726 (Tex.App.–El Paso 2001, no pet.); *Star-Telegram, Inc. v. Doe,* 915 S.W.2d 471, 473-74 (Tex.1995) (tort claim); *Morales v. Ellen*, 840 S.W.2d 519, 524 (Tex.App.–El Paso 1992, writ ref'd n.r.e.); *Vandiver v. Star-Telegram, Inc.*, 756 S.W.2d 103, 106 (Tex.App.–Austin 1988, no writ); *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex.App.–Austin 1983, writ ref'd n.r.e.); *Apodaca v. Montes*, 606 S.W.2d 734, 737 (Tex.Civ.App.–El Paso 1980, no writ). The Court of Appeals' decision rests on this Court's holding in *Industrial Foundation* and is consistent with the holdings of other courts of appeal. Petitioner has given up any claim that date of birth is highly intimate or embarrassing information as that term has been applied by Texas courts. *See Industrial Found.*, 540 S.W.2d at 683; *Hubert*, 652 S.W.2d at 551.

2. The Comptroller's reconstruction of common law privacy is not supported by Texas law.

Petitioner seeks to dilute the test for common law privacy, by allowing a cause of action for information that does not meet the tests for any of the three types of actions

recognized in Texas under common law privacy. The first and second interests protected by common law privacy require that the conduct be "highly offensive" to a reasonable person. An unwarranted intrusion upon seclusion is proved by (1) an intentional intrusion, physical or otherwise, upon another's solitude, seclusion, or private affairs or concerns, and (2) which would be highly offensive to a reasonable person. *Valenzuela v. Aquino,* 853 S.W.2d 512, 513 (Tex.1993). Disclosure of highly intimate or embarrassing facts, is a violation if disclosure of such information would be highly offensive to "a reasonable person of ordinary sensibilities." *Industrial Found.*, 540 S.W.2d at 682; *Star-Telegram,* 915 S.W.2d at 473-74. The *Restatement (Second) of Torts § 652D cmt. b* (1977) states that protection under the tort of invasion of privacy is given "only against unreasonable publicity, of a kind highly offensive to the ordinary reasonable man." "As with the outrageousness requirement for intentional infliction of emotional distress and the requirement in slander cases that words be capable of a defamatory meaning, whether something is 'highly offensive' is first a matter of law; a certain threshold of offensiveness is required." *Polansky v. Southwest Airlines Co.*, 75 S.W.3d 99, 105 (Tex.App.–San Antonio 2002, no pet.). Some minimum standard must apply; otherwise, the line between protected information and unprotected information disappears.

Petitioner wants to lower the bar for information that is protected under common law privacy, not only by permitting non-intimate or non-embarrassing information to be protected from disclosure, but also by restricting public access to information that may lead to other

information that should be protected, whether or not it qualifies as highly intimate or embarrassing information. Petitioner's argument acknowledges that disclosure of a date of birth in and of itself is not highly offensive. Comptroller's Pet. 12. Instead, Petitioner argues that disclosure of date of birth "is highly offensive because it can be used to access other 'highly intimate' or sensitive information." Comptroller's Pet. 12. Without any legal support, Petitioner claims that the Court of Appeals erred because "[i]information that be [sic] used to access sensitive information is itself sensitive information, the release of which would be highly offensive to [sic] reasonable person as a matter of law." Comptroller's Pet. 12.

The Court has rejected this reasoning more than once. In *Star-Telegram*, the Court considered a privacy claim based upon the disclosure of details surrounding a rape. The victim claimed that reporting the factual details was a violation of privacy even though the newspaper did not report her name, address, or telephone number. In an argument similar to Petitioner's, the plaintiff argued that "[b]y piecing the details together, those who knew her well could deduce her identity as the victim." *Star-Telegram*, 915 S.W.2d at 474. The Court refused to hold the newspaper to a higher standard beyond proving that the information in question was of legitimate public concern:

> Facts which do not directly identify an innocent individual but which make that person identifiable to persons already aware of uniquely identifying personal information, may or may not be of legitimate public interest. To require the media to sort through an inventory of facts, to deliberate, and to catalogue each of them according to their individual and cumulative impact under all circumstances, would impose an impossible task; a task which

> foreseeably could cause critical information of legitimate public interest to be withheld until it becomes untimely and worthless to an informed public.

Star Telegram, 915 S.W.2d at 474-75.

Information that is otherwise public cannot be withheld, because someone can deduce confidential information from it in light of other information that he or she may possess. *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 675-76 (Tex. 1995); *see also City of Lubbock v. Cornyn*, 993 S.W.2d 461, 465 (Tex.App.–Austin 1999, no pet.) (holding that city could not withhold accident reports or public dispatch logs, even though the requestor could obtain from the logs the two pieces of information needed to request the otherwise confidential accident reports). The Third Court followed this Court's lead. *Texas Comptroller*, 244 S.W.3d at 637; *see also* Tex. Gov't Code § 552.204(1). In arguing for an expanded scope of the type of information that should be covered under common law privacy, Petitioner would have a requestor, the Attorney General and the courts "sort, deliberate, and catalogue"each piece of information to determine if, in part or whole, disclosure of the information would reveal confidential information. This is not the test under common law privacy or under the PIA.

Petitioner goes so far as to state that the Court can consider "potential misuse of personal information when it is deciding whether that information implicates a common-law privacy interest." Comptroller's Pet. 12. No Texas case is cited for this proposition and the Arizona case that is cited did not opine on this precise issue. *See Scottsdale Unified School Dist. v. KPNX Broadcasting*, 955 P.2d 534 (Ariz. 1998). Petitioner claims that the

prohibition in the PIA against considering the motives of a requestor does not apply to the courts. Comptroller's Pet. 12; *see* Tex. Gov't Code § 552.222. Petitioner's view is in direct conflict with the Court's admonition against considering the motives of a requestor. *Industrial Found.*, 540 S.W.2d at 674. In *Industrial Foundation*, the Court of Appeals held that it could refuse to order disclosure of public information "if the purpose for which the information is sought is illegal or in violation of a policy of the State." *Id.* The Court rejected this concept, holding that the intent of the PIA "of making public information available to *any* person would be thwarted if a court were allowed to consider the requestor's motives even though the custodian may not do so." *Id.*; *see also A & T Consultants*, 904 S.W.2d at 676.

In the cases from other jurisdictions cited by Petitioner, the courts applied a balancing test–not principles governing the tort of invasion of privacy as recognized in Texas. *See, e.g., Scottsdale,* 955 P.2d at 538-40; *Data Tree, LLC v. Meek*, 109 P.3d 1226, 1237-38 (Kan. 2005); *Zink v. Commonwealth*, 902 S.W.2d 825, 828 (Ky.App.1994); *Oliva v. United States*, 756 F.Supp. 105, 107 (E.D.N.Y.1991). Kansas rejected application of the principles dealing with the tort of invasion of privacy. *Data Tree*, 109 P.3d at 1237. These state courts found guidance in federal Freedom of Information Act (FOIA) cases and the balancing test applied in privacy claims under FOIA. *Scottsdale*, 955 P.2d at 538-39; *Data Tree*, 109 P.3d 1237-38; *Zink*, 902 S.W.2d at 828; *see also* FOIA, 5 U.S.C. §§ 552(b)(6), (7)(C) (2007). Texas law does not have a balancing component to the test applied to privacy claims under the PIA.

Neither is the definition of private information the same. The U.S. Supreme Court uses a broad definition of "privacy" for the purposes of FOIA: "[I]nformation may be classified as 'private' if it is 'intended for or restricted to the use of a particular person or groups or class of persons: not freely available to the public.'" *U. S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 763-64 (1989) (quoting *Webster's Third New International Dictionary* 1804 (1976)). Texas cannot simply lift the tests of other jurisdictions; it is constricted by the limitations in section 552.101 that require confidentiality to be grounded in the constitution, a statute, or a judicial decision.

3. Legislative action on dates of birth indicates the Legislature intended them to remain open.

The Comptroller's legitimate concern for identity theft drives this petition for review. Protection of the dates of birth to counter identity theft, however, lies in the province of the Legislature. This past session, three bills were introduced to protect dates of birth of public employees. None passed.[2] In 2005, the Legislature had the opportunity to add date of birth to the list of confidential information on voter registration applications, for the express purpose of preventing identity theft. Tex. H.B. 345, 79th Leg., R.S. (2005) (as filed January 10, 2005) (CR 147-48, AG's Reply to Comptroller's Cx-MSJ, Appendix, Tab A); House Elections Committee, Bill Analysis, Tex. C.S.H.B. 345, 79th Leg., R.S. (2005) ((CR 149-50, AG's Reply to Comptroller's Cx-MSJ, Appendix, Tab B); Committee Hearing on Tex. H.B.

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[2]Tex. S.B. 281 (Tex. H.B. 1580), Tex. S.B. 1848 (Tex. H.B. 3767), and Tex. H.B. 836, 80th Leg., R.S. (2007).

345, Before the House Committee on Elections, 79th Leg., R.S. (February 16, 2005) (testimony of Representative Burt R. Solomons, author).[3]

Tex. Elec. Code § 13.004(c) expressly makes confidential a social security number, driver's license number, or number of a DPS personal identification card furnished on a voter registration application. The Legislature, including the bill's author, declined to add date of birth to this confidential list. Instead, the Legislature prohibited county officials from posting date of birth, telephone number, and the subsection (c) information on the internet. Tex. Elec. Code Ann. § 13.004(d) (Vernon Supp. 2007). Dates of birth on voter registration applications are still available if requested under the PIA. Debate on Tex. H.B. 345 on the Floor of the House, 79th Leg., R.S. (April 11, 2005) (Rep. Solomons explaining information in section 13.004(d) is available from a county clerk, but not on the clerk's website).[4]

Also, in 2005, the Legislature enacted the Identity Theft Enforcement and Protection Act. Tex. Bus. & Com. Code Ann. ch. 48 (Vernon Supp. 2007) (Act of May 27, 2005, 79th Leg., R.S., ch. 294, § 2, 2005 Tex. Gen. Laws 885). The law requires businesses, but not governmental bodies, to maintain procedures to protect against unlawful use or disclosure of "sensitive personal information" (SPI). Tex. Bus. & Com. Code § 48.102. Date of birth is not SPI under chapter 48; only a person's name in conjunction with a social security

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[3]Tapes available from the House of Representatives Audio/Video Services or on the web: http://www.house.state.tx.us/committees/audio79/broadcasts.php?session=79&committeeCode=240, at 1:16.

[4]Tapes available from House of Representatives Audio/Video Services or on the web: http://www.house.state.tx.us/media/chamber/79.htm, at 1:10:34.

number, driver's license or official identification number, or an account or credit/debit card number is. Tex. Bus. & Com. Code § 48.002(2).

Attorney Fees

Reply to Second Issue (Restated)

> The Court of Appeals did not abuse its discretion in denying attorney fees to *The News*, and no reversible error requires review by the Court.

The Comptroller claims that the "Attorney General and Intervenor were not entitled to attorneys' fees as a matter of law," but the Attorney General did not seek attorney fees. *See* Comptroller's Pet. 13; CR 26-27, AG's Orig. Answer. Moreover, the Comptroller seeks review of the Court of Appeals' decision in her favor, not because she has been *harmed* by the holding on attorney fees, but because she does not agree with the Third Court's basis for its decision that *The News* is not entitled to attorney fees. But for the Comptroller's petition on this issue, there would be no live controversy for the Court to consider.[5]

The Comptroller seeks a holding "as a matter of law" that *The News* is not entitled to attorney fees on the claimed grounds because the Court of Appeals left "open the possibility that government officials in the future . . . may be liable for attorneys' fees." Comptroller's Pet. 13. The Comptroller is seeking an advisory opinion for some future contingencies that

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[5] *The News*, the party who was denied attorney fees by both the trial court and the Court of Appeals, would not be appealing this adverse ruling but for the Comptroller raising the issue in her petition for review. *The News'* Pet. 1.

are not in controversy here.[6]

The Comptroller has not established sufficient reason for the Court to review the decision on attorney fees. Even if the Court of Appeals should have ruled on the jurisdictional arguments of the parties, the Court's decision applying the abuse of discretion standard is not reversible error. Tex. R. App. P. 44.1. As to the Comptroller, the right decision was still made; she is not liable for attorney fees in this case. *See Luxenberg v. Marshall*, 835 S.W.2d 136, 142 (Tex.App.–Dallas 1992, orig. proceeding) (holding that a trial court cannot abuse its discretion if it reaches the right result, even for the wrong reasons); *Hawthorne v. Guenther*, 917 S.W.2d 924, 931(Tex.App.–Beaumont 1996, writ denied) (holding that even though a trial court gives an incorrect reason for its decision, the trial court's assignment of a wrong reason is not reversible error).

The Comptroller provides no legal argument explaining why the Court of Appeals decision was decided on the wrong basis. She claims that Tex. Gov't Code § 552.324 was enacted to enable governmental bodies to sue over rulings without being liable for attorney fees. No legislative history or statutory construction is provided. Section 552.324, along with section 552.325, was enacted to prohibit governmental bodies from suing requestors.

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[6]The claim of *The News*, as a requestor, is not a common occurrence. Respondent's counsel is not aware of any other requestor who has claimed attorney fees under section 552.323(b). For all practical purposes, this issue may never arise again. Attorney fees are generally mandatory in mandamus suits by the Attorney General and a requestor if plaintiff substantially prevails. Tex. Gov't Code §§ 552.321, .323(a). A requestor may bring an action for mandamus when it intervenes in a suit over an Attorney General's ruling. *Thomas v. Cornyn*, 71 S.W.3d 473, 482 (Tex.App.–Austin 2002, no pet.). Accordingly, a requestor need not rely on either section 552.323(b) or the Tex. Civ. Prac. & Rem. Code Ann. § 37.009 (Vernon 1997). If a requestor prevails, fees will most certainly be awarded under section 552.323(a). For whatever reason, *The News* did not bring a mandamus action when it intervened in this suit.

See City of Garland v. Dallas Morning News, 22 S.W.3d 351, 358 (Tex. 2000). Its purpose is not to bar attorney fees against governmental bodies. The Comptroller does not challenge the Court of Appeals' holding that the Comptroller brought her suit under Tex. Gov't Code § 552.353(b)(3), thus, invoking the attorney fee provision in section 552.323(b). Comptroller's Pet. 13-14; *Texas Comptroller*, 244 S.W.3d at 640. No error is shown.

CONCLUSION AND PRAYER

In order for the Court to grant the claim under common law privacy, Petitioner is asking the Court to ignore the elements of the recognized tests for each interest protected under common law privacy, the correct standard for PIA claims under common law privacy, and the basic principles, set out by the Legislature and this Court, governing disclosure of public information under the PIA. The Comptroller provides a persuasive policy argument on why the Legislature should at least consider making dates of birth confidential. But the Comptroller had the opportunity to make that argument to the Legislature last year. The Legislature considered the issue and rejected making the very information at issue in this case confidential. Petitioner's position is contrary to legislative intent and controlling judicial decisions. The Court of Appeals correctly determined that the Comptroller failed to meet her burden under the PIA to demonstrate that dates of birth of state employees are excepted from disclosure. The Court of Appeals applied established law. It did not make new law.

The issue of attorney fees is a non-issue and review should be denied. If the Comptroller's petition for review is denied, *The News* will withdraw its petition. *The News'*

Pet. 1. No error of importance to the jurisprudence of this state is presented to merit review by the Court.

Respondent Greg Abbott, Attorney General of Texas, respectfully asks the Court to deny the petitions for review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response to Petitions for Review of Respondent Greg Abbott, Attorney General of Texas, has been served, on June 6, 2008, in the manner indicated, on the following attorneys of record:

✓ Hand Delivery

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