

October 2, 2006

By Certified Mail RRR and
Electronic Mail

Jennifer S. Riggs
Riggs & Aleshire, P.C.
700 Lavaca Street, Suite 920
Austin, TX 78701-3113

Re: Cause No. D-1-GN-06-003726, *Lake Travis Independent School District v. David Lovelace and Melissa Lovelace*, in the 126th Judicial District Court of Travis County, Texas

Dear Ms. Riggs:

We represent Lake Travis Independent School District ("LTISD") in the above lawsuit. David Thompson has informed me that he learned on the afternoon of Friday, September 30, that you are authorized to accept service for the Defendants in this matter. Unfortunately, when we learned of your authority, we had already secured service of the petition on the Defendants with the District Clerk's office. Enclosed is a courtesy copy of Plaintiff's Original Petition and Verified Application for Temporary Injunction, Declaratory Judgment and Other Relief. We have not yet received word that is has been served on the Defendants.

We are now, however, serving you, on behalf of your clients, the notice of the hearing regarding LTISD's request for a temporary injunction in this case. The hearing for Plaintiff's Request for Temporary Injunction is set on October 26, 2006, at 9:00 a.m. Please do not hesitate to call David Thompson at 713.221.1415 or me at 512.542.2130 if you have any questions.

Very truly yours,

Bracewell & Giuliani LLP



Susan K. Bohn

SKB/rp
Enclosures

III. JURISDICTION AND VENUE

4. This Court has jurisdiction over the Defendants, residents of the state. This Court has subject matter jurisdiction over this lawsuit because the District seeks injunctive relief and declaratory relief under the Texas Uniform Declaratory Judgment Act, TEX. CIV. PRAC. & REM. CODE § 37.001 *et seq.*

5. Venue is proper in this county under the general venue rule because the Defendants, natural persons, reside in this county.

IV. FACTUAL BACKGROUND

6. The Defendants are residents of LTISD and are the parents of students who attend LTISD. The Defendants filed an unrelated legal action against the District on [REDACTED] in which the District prevailed on all but one issue in a decision issued on [REDACTED]. Beginning in June of 2005, the Defendants began submitting requests to the District pursuant to the Texas Public Information Act, Texas Government Code §§ 552.001, *et seq.* ("PIA"). Between June 20, 2005 and September 29, 2006, the Defendants have submitted approximately 2,206 requests for records to the District.

7. LTISD representatives have copied approximately 100,626 pages in response to the Defendants' requests.

8. The District has made approximately 518 requests for open records determinations to the Office of the Attorney General for the State of Texas related to the Defendants' requests.

9. The Defendants often have submitted their requests in groups. The groups of requests are frequently waiting on multiple facsimile machines or in the electronic mail in-box of District personnel when they arrive at work in the morning. The largest group of requests

submitted to the District by the Defendants was received on the evening of July 9, 2006, through the early morning hours of July 10, 2006, and consisted of 238 separate requests for records. Another large group of requests submitted to the District by the Defendants was received on April 17, 2006, and consisted of 162 separate requests for records.¹ The Defendants have also submitted 90 requests (on October 10, 2005), 69 requests (on November 11, 2005), 62 requests (on December 13, 2005) and 88 requests (on December 16, 2005).

10. The Defendants often seek a vast amount of documentation at a given time. One of their requests resulted in District staff compiling approximately 10,000 pages of documents. In the batch of 162 requests submitted by the Defendants on April 17, 2006, seven of the requests sought copies of "any and all written, printed, and electronic memorandum to any and all employees of the LTISD authored or approved by Melissa Loe," the District's public information officer, in nine different months. In order to respond properly to this request, because the District's computer server was not equipped to perform a search with such a broad scope, over 600 of the District's staff members, including teachers, campus administrators, and others who provide direct services to the District's students, were asked to search through their files to find any memorandum from Ms. Loe.

11. The District has worked diligently to create a system that has enabled it to meet all the requirements of the PIA when responding to the Defendants' requests under the PIA. In handling so many requests, the District has created a streamlined process, which involves many staff members, for responding to the Defendants' requests.

12. The Defendants' actions have necessitated District staff members putting aside the core educational mission work of the District to respond to the Defendants' requests. These

¹ The 162 requests were withdrawn several days later, after the District had spent time and effort processing the requests.

requests have forced the redirection of hundreds of hours of staff time from the District business of providing instruction, services, and support to its students to a scramble by District staff members to analyze their requests, seek legal advice, seek determinations from the Attorney General, and gather responsive documents, all within the strict timelines of the PIA.

13. Despite the diligent efforts of the District in assisting the Defendants in obtaining the documents that they have requested, the Defendants consistently have taken actions, in addition to submitting excessive numbers of requests, in an effort to frustrate the ability of District staff to timely respond to the requests and to perform the other duties they have to the students, staff members, and taxpayers of the District. Efforts by the Defendants to unnecessarily encumber District staff members include: sending duplicates of requests to multiple facsimile machines in the LTISD central administration office, effectively jamming one of the machines on a number of occasions, after repeated requests by the District that they submit their requests only to the facsimile machine that is readily accessible to the District's public information officer; requesting records that have already been provided to them or that they previously have been told do not exist; refusing to cooperate with requests from the District public information officer that they clarify some of their requests; and deliberately encrypting PDF requests sent through electronic mail with password protection to interrupt the process of forwarding the electronic messages for processing pursuant to the PIA.

14. The District has been and is committed to complying with the PIA, and has worked diligently with its attorneys and the Office of the Attorney General to respond lawfully to all PIA requests, including those of the Defendants. The District has consistently complied with the PIA in providing responsive documents to the Defendants and in seeking open records determinations from the Office of the Attorney General. Furthermore, the District has fully

responded to the frequent complaints made by the Defendants to the Office of the Attorney General.

15. The Defendants have misused the PIA to harass and besiege the District in an effort to effectively debilitate the administrative and educational functioning of the District. The Defendants' attack on the District, as apparent retribution for the District's defending itself in legal actions that they have brought against the District, is a perversion of the PIA. The statute was not intended to be used as a weapon to intentionally divert the resources of a governmental entity and to torment the entity's staff members. The Defendants have succeeded in redirecting precious District staff time and monetary resources from the District's legal obligation to educate its students to the District's addressing of their personal vendetta against the District.

16. In addition to misusing the PIA to harass the District and its employees, the Defendants also have misused the District's own process for parents to present complaints and concerns to the District. The District's Board of Trustees ("Board") has adopted policies FNG (Legal) and FNG (Local) establishing a process for parents to present complaints and concerns. The process has three levels, and encourages resolution of complaints and concerns at the lowest level possible. At Level 1 the campus principal or other program administrator hears the complaint or concern, at Level 2 the District's appropriate Assistant Superintendent hears the complaint or concern, and at Level 3 the Superintendent and/or the Board hears the complaint or concern.

17. From August 1, 2005, through September 29, 2006, the Defendants had filed 56 complaints to be considered by the District at Levels 1, 2, or 3.

18. In addition to the time spent by its employees, the District has been compelled to employ attorneys to advise administrators and the Board concerning complaints filed by the

Defendants. The District has been forced to spend approximately \$45,000 of local tax dollars directly as a result of complaints filed by the Defendants.

19. In addition to misusing the District's own complaints process, the Defendants have filed unfounded complaints against District employees with the State Board for Educator Certification (SBEC), a state agency responsible for the licensure and discipline of certified educators in Texas. From January 25, 2006 through the present, the Defendants have filed 11 SBEC complaints against District employees, including three SBEC complaints against Rocky Kirk, the District's superintendent, six SBEC complaints against Pamela Carroll, the District's Director of Special Education, one SBEC complaint against Cynthia Clinesmith, the Assistant Superintendent for Curriculum and Instruction, and one SBEC complaint against Diane Frost, the Assistant Superintendent for Administrative Services.

20. One SBEC complaint that the Defendants have filed against Superintendent Kirk and Director Carroll illustrates the unfounded and harassing nature of their actions. On April 3, 2006, Board President Susan Tolles sent a letter to the LTISD community with information responding to numerous questions from District residents about the impact of citizens' complaints, PIA requests, and letters of inquiry regarding the District's operations. In this letter,

[REDACTED]

[REDACTED] On May 19, 2006, the Defendants filed an SBEC complaint against Superintendent Kirk and Director Carroll, alleging that they somehow violated their professional responsibilities because they did not prevent the Board President [REDACTED]

[REDACTED]

21. In order to respond to SBEC complaints filed by the Defendants, District employees have had to expend significant time, which has interfered with their ability to provide for the education of all students in the District.

22. In addition to the time spent by its employees, the District has been compelled to employ attorneys to advise the District and represent the affected administrators, at an approximate cost of \$15,000.

23. For the 2005-2006 school year, from August 1, 2005, through July 31, 2006, the District reasonably estimates that the total cost of responding to the Defendants' PIA requests and complaints, including both direct costs (primarily for legal assistance) and indirect costs (primarily for staff time redirected from other necessary District functions, including direct instruction of students) was in excess of \$600,000. Damages effectuated on the children of the District by the redirection of staff time and attention away from its core educational role (including curriculum development and direct instruction of students) cannot be measured or adequately compensated by money damages.

24. All of the Defendants' actions that have cost the District tax revenues have had a particularly serious impact on the District, since the District is a "recapture" district under Chapter 41 of the Texas Education Code and must raise, for the 2005-2006 school year, about \$2.00 of local property taxes for each \$1.00 that the District actually is authorized to retain to support its own educational programs.

25. The District's new teachers reported for work on August 7, 2006, and other professional staff reported for work on August 8, 2006. The District began the instruction of students for the 2006-2007 school year on August 14, 2006. Since the first day of instruction for the 2006-2007 school year, the Defendants have filed 329 new requests for information. The

staff time and resources necessary to respond to these requests is impairing the District's ability to meet its responsibilities to all children in the District for the 2006-2007 school year.

V. CAUSES OF ACTION

A. Public Nuisance

26. To the extent necessary or appropriate, the foregoing paragraphs are incorporated herein.

27. In misusing the PIA in an effort to harass, besiege and attack the District, the Defendants have interfered with the public right of the taxpayers of the District to a public education for their children that is unencumbered with excessive drains on District staff time and resources. The Defendants' diversion of time and resources within the District has affected all or a considerable part of the LTISD community.

28. The Defendants' attack on the District constitutes an abuse and misuse of the PIA and a public nuisance, interfering with the necessary performance of governmental duties, including the direct instruction of students.

B. Abuse of Governmental Processes

29. To the extent necessary or appropriate, the foregoing paragraphs are incorporated herein.

30. The Defendants' attack on the District constitutes an abuse and misuse of the PIA and an abuse of the governmental processes of the District and of the State of Texas, interfering with the necessary performance of governmental duties, including the direct instruction of students.

VI. RELIEF SOUGHT

A. Declaratory Relief

31. Based on the foregoing facts and special circumstances, LTISD seeks a declaration from the Court that the Defendants have abused and misused the Texas Public Information Act, and that in light of that abuse the District's response to requests for records under the PIA made by the Defendants shall be governed by a modified process under the PIA, and that the District may comply with the Court-ordered process without violating the PIA.

B. Injunctive Relief

32. To the extent necessary, the foregoing paragraphs are incorporated herein.

33. **APPLICATION FOR TEMPORARY INJUNCTION:** LTISD asks the Court to set this application for temporary injunction for immediate hearing, and after the hearing, to issue a temporary injunction enjoining the Defendants or any person acting on behalf of the Defendants from submitting any requests for records to the District pursuant to the PIA during the pendency of this lawsuit. LTISD also requests that the Court enjoin the Defendants or any person acting on behalf of the Defendants from filing any additional complaints under the District's own complaint process, or with SBEC against District employees.

34. **REQUEST FOR PERMANENT INJUNCTION:** LTISD asks the Court to set its request for a permanent injunction for a full trial on the merits and, after the trial, issue a permanent injunction against the Defendants to enjoin the Defendants or anyone acting on behalf of the Defendants from submitting any requests for records to the District pursuant to the PIA. LTISD also requests that the Court enjoin the Defendants or anyone acting on behalf of the Defendants from filing any additional complaints under the District's own complaint process, or with SBEC against District employees.

35. **MODIFIED PROCEDURE UNDER THE PIA:** Although there is no amount of monetary relief that can fully compensate and make the District whole for the irreparable injury it has suffered as a result of the Defendants' actions, in the alternative, LTISD requests that the Court order the following modified procedure to apply to any and all PIA requests submitted by the Defendants:

a. when the Defendants submit one or more PIA requests, either individually or in one or more groups, the District will make a reasonable, good-faith estimate of the total cost of providing the requested information, including both direct costs and indirect costs, including, but not limited to, attorney's fees and the cost of staff time for all staff whose assistance is necessary to respond to the request or requests;

b. the District will inform the Defendants in writing of its reasonable, good-faith estimate of the total cost;

c. if the Defendants desire for the District to produce any requested information, the Defendants shall deliver to the District a certified check in the full amount of the District's reasonable, good-faith estimate of the total cost;

d. once the District receives the Defendants' certified check, the Defendants' PIA request will be considered submitted to the District at that point in time, all deadlines under the PIA shall begin at that time, and the District shall then produce any requested information in accordance with the PIA; and

e. any request for information by the Defendants that is not in accordance with these procedures shall not create any duty for the District, or any officer, employee, attorney or agent of the District, to respond, except as provided herein, and shall not trigger any of the timelines and/or procedures of the PIA.

C. Monetary Damages

36. LTISD requests that the Court award it actual monetary damages, including both the reasonable value of time spent by its employees and reasonable and necessary attorney's fees directly related to and incurred by the District as a result of the harassing and abusive actions of the Defendants.

D. Attorney's Fees and Costs

37. LTISD also requests its reasonable and necessary costs and attorney's fees arising out of this lawsuit.

E. Waiver of Bond

38. As a governmental entity and political subdivision of the State of Texas, LTISD requests that the requirement that it execute and file a bond be waived.

VII. CONDITIONS PRECEDENT

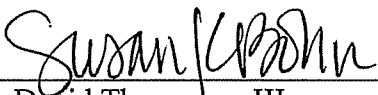
39. All conditions precedent to the District's claims for relief have been performed or have occurred.

VIII. PRAYER

For the foregoing reasons, the Plaintiff, Lake Travis Independent School District, asks the Court to render a declaratory judgment in favor of the District, and to award such other relief against the Defendants David Lovelace and Melissa Lovelace as the Court deems appropriate, both at law and in equity, including, but not limited to, declaratory relief, injunctive relief, costs of suit, monetary damages, and attorney's fees.

Respectfully submitted,

Bracewell & Giuliani LLP

By: 
J. David Thompson, III
State Bar No. 19950600

Susan K. Bohn
State Bar No. 24036025

Christopher B. Gilbert
State Bar No. 00787535

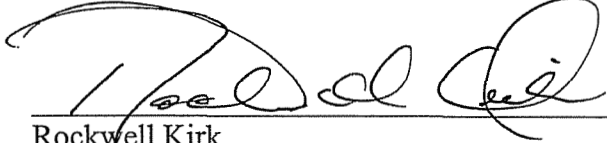
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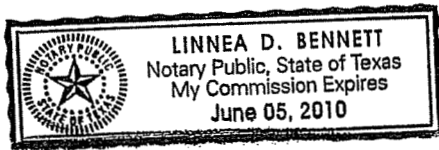
AUTHENTICATION

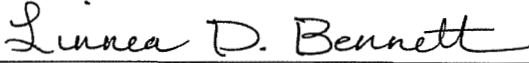
Before me, the undersigned authority, on this day personally appeared Rockwell Kirk, who, upon his oath deposed and stated that he has read the foregoing Original Petition and Verified Application for, Temporary Injunction, Declaratory Judgment and Other Relief, and that the factual statements contained therein are with his personal knowledge, true and correct.



Rockwell Kirk

SUBSCRIBED AND SWORN to before me by the same Rockwell Kirk,
this the 29 day of September, 2006.





NOTARY PUBLIC

LAKE TRAVIS INDEPENDENT
SCHOOL DISTRICT,

Plaintiff,

V.

DAVID LOVELACE and
MELISSA LOVELACE,

Defendants.

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§
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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

126TH JUDICIAL DISTRICT

NOTICE OF HEARING

Please take notice that Plaintiff Lake Travis Independent School District's Request for Temporary Injunction, filed on September 29, 2006, has been set for oral hearing on October 26, 2006, at 9:00 a.m.

Respectfully submitted,

Bracewell & Giuliani LLP

By: 

J. David Thompson, III
State Bar No. 19950600

Susan K. Bohn
State Bar No. 24036925

Christopher B. Gilbert
State Bar No. 00787535

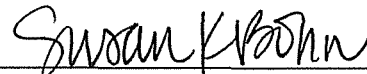
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Attorneys for Lake Travis Independent School
District

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by *certified mail, return receipt requested* on all parties of record, in accordance with the Texas Rules of Civil Procedure, on the 2nd day of October, 2006.

Jennifer S. Riggs
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700 Lavaca Street, Suite 920
Austin, TX 78701-3113



Susan K. Bohn