

**Supreme Court of Texas**  
**June 19, 2015**

***Boeing Co. v. Paxton***

No. 12-1007

Case Summary written by Allison Grayson, Online Edition Editor.

JUSTICE DEVINE delivered the opinion of the Court, in which CHIEF JUSTICE HECHT, JUSTICE GREEN, JUSTICE WILLETT, JUSTICE GUZMAN, JUSTICE LEHRMANN, and JUSTICE BROWN joined.

In 1995, Boeing chose Kelly Air Force Base in San Antonio as its new “commercial refit facility for servicing heavy-lift military aircraft.” In response, the City of San Antonio created the Greater Kelly Development Authority as a means of facilitating Kelly Air Force Base’s transition. The Greater Kelly Development Authority was “later renamed the Port Authority of San Antonio” (the Port).

In 1998, Boeing leased property at Kelly Air Force Base improved by the Port using funds borrowed from the city. The lease made Boeing the Port’s largest tenant.

After completion of the lease, Robert Silvas, a former Boeing employee, “submitted a Public Information Act (PIA) request to the Port for various Boeing corporate information, including the lease.” After filing a redacted version of the information requested by Silvas, Boeing filed objections with the Attorney General for the redacted material. In its objections, Boeing asserted “that the information withheld [was] competitively sensitive information regarding its overhead costs at Kelly that would give advantage to its competitors.”

The Attorney General concluded that none of the information Boeing sought to redact was exempt under the Public Information Act. Further, the trial court agreed with the Attorney General, ordering the Port to provide the redacted information to Silvas. The court of appeals affirmed the trial court’s decision.

Issues: Does the PIA require “a governmental body to raise and argue any applicable disclosure exception to the Attorney General as a prerequisite to judicial review?” Further, is the withheld information “competitively sensitive information . . . that would give advantage” to Boeing’s competitors, and therefore subject to exemption under the PIA?

While the Court stated that the PIA generally does require a governmental body to raise specific exceptions prior to judicial review, the rule does not apply “when the requested information implicates another person’s privacy or property interests.” Additionally, when a third party’s interests are involved, a governmental body need not raise exceptions regarding the interests of another person before the Attorney General. Therefore, “the Port was not required to raise the exception before the Attorney General” because either the government or the private party may invoke an exception to protect its privacy and property interests.

In addition to the Court’s discussion on exceptions to the PIA, the Court acknowledged the possibility for Boeing’s competitors to use the redacted information in question. The Court determined that the “undisputed evidence [allowed] only a single logical inference—that the information at issue ‘if released would give advantage to a competitor or bidder.’” Further, the Court held that Boeing had the right to protect its privacy and property interests, and therefore, reversed the court of appeals’ judgment.

JUSTICE BOYD, dissenting.

Although Justice Boyd agreed that “persons who are not governmental bodies may assert section 552.104 of the Texas Public Information Act as an exception to mandatory disclosure of information in which they have a privacy or property interest,” he argued that Boeing did not “conclusively [establish] that the exception applies to the information at issue in this case.”

Explaining his position, Justice Boyd stated that Boeing’s evidence in support of its arguments was “too hypothetical and speculative to establish that the release of its information” would give any advantage to its competitors.” Further, he urged that a party seeking to utilize the exception must show a specific competitor who would gain an advantage through such information.

## ***Suarez v. City of Texas City***

No. 13-0947

Case Summary written by Katherine Koll, Staff Member.

JUSTICE GUZMAN delivered the opinion of the Court.

This premises liability case was brought against Texas City (City) for the deaths of petitioner's husband and twin daughters at a man-made peninsula off the coast of Texas City into Galveston Bay (Dike). The Dike had been closed for two years due to damage sustained from Hurricane Ike and had only been re-opened for a month before the tragedy occurred. The Suarez family paid the entrance fee and the two nine-year-olds, still dressed in street clothes, entered the water and shortly thereafter were pulled into deeper water and were unable to stay afloat. Despite the father's rescue attempts, the father and daughters died. There were no signs in the area that prohibited swimming or warned of any dangers. The mother brought a claim under the Tort Claims Act and the Wrongful Death Statute alleging the City had actual and constructive knowledge of the dangerous conditions that were created due to artificial and natural conditions on the beach. Therefore, governmental immunity was waived.

The City filed a plea to the jurisdiction on the basis that immunity was not waived under the Tort Claims Act because the family was a recreational user, and under the circumstances the City did not owe a duty. The trial court denied the plea, and the City subsequently filed an interlocutory appeal on the same basis. The court of appeals granted the appeal on the basis that there was insufficient evidence the City had subjective awareness of the dangerous conditions.

Issue: Did the municipality waive its governmental immunity under the Tort Claims Act, limited by the recreational use statute, when it failed to warn recreational users of dangers on the man-made peninsula?

The Court acknowledged that by applying the recreational use statute in this case, liability is limited to claims of gross negligence because of recreational users' status as trespassers. In order to adequately show gross negligence, there must be objective evidence of an extreme degree of risk and that the City knew of the risk, but proceeded with conscious indifference. The Court, assuming *arguendo*

that there was an extreme risk, did not find sufficient evidence that the City was aware of the risk at the time of the accident. The only evidence offered was circumstantial and did not rise to the requisite level of reasonable support for its conclusion. Without evidence of gross negligence, the City retained its immunity from suit and the claim was properly dismissed for want of jurisdiction.