KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action. The ruling and judgment can be viewed in PDF format below.

February 23, 2015

Ms. Jennifer S. Riggs
Counsel for VFW
Riggs Aleshire & Ray
700 Lavaca Street, Suite 920
Austin, Texas 78701

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2015-03558

Dear Ms. Riggs:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 554393.

The Veterans of Foreign Wars, Department of Texas, and the Veterans of Foreign Wars Foundation (collectively, the "department") received two requests from the same requestor for information pertaining to the Veterans Assistance Fund, any communications that mention the requestor, and information related to the department's denial of the requestor's application. You claim the department is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.114, 552.130, 552.137, and 552.140 of the Government Code.[1] We have considered your arguments and reviewed the submitted representative sample of information.[2] We have also received and considered comments from the

[1]Although you raise section 552.026 of the Government Code, we note section 552.026 is not an exception to disclosure. Rather, section 552.026 provides the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act ("FERPA") of 1974. Gov't Code § 552.026. We note FERPA is applicable only to educational agencies or institutions, and the department is not an educational agency or institution.

[2]We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You assert the department is not a governmental body, and therefore its records are not subject to the Act. The Act defines "governmental body" in pertinent part as

> the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds[.]

Id. § 552.003(1)(A)(xii). "Public funds" means "funds of the state or of a governmental subdivision of the state." *Id.* § 552.003(5). The determination of whether an entity is a governmental body for purposes of the Act requires an analysis of the facts surrounding the entity. *See Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 360-362 (Tex. App.—Waco 1998, pet. denied). In Attorney General Opinion JM-821 (1987), this office concluded that "the primary issue in determining whether certain private entities are governmental bodies under the Act is whether they are supported in whole or in part by public funds or whether they expend public funds." Attorney General Opinion JM-821 at 2. Thus, the department would be considered a governmental body subject to the Act if it spends or is supported in whole or in part by public funds.

Both the courts and this office previously have considered the scope of the definition of "governmental body" under the Act and its statutory predecessor. In *Kneeland v. National Collegiate Athletic Association*, 850 F.2d 224 (5th Cir. 1988), the United States Court of Appeals for the Fifth Circuit recognized that opinions of this office do not declare private persons or businesses to be "governmental bodies" that are subject to the Act "simply because [the persons or businesses] provide specific goods or services under a contract with a government body." *Kneeland*, 850 F.2d at 228; *see* Open Records Decision No. 1 (1973). Rather, the *Kneeland* court noted that in interpreting the predecessor to section 552.003 of the Government Code, this office's opinions generally examine the facts of the relationship between the private entity and the governmental body and apply three distinct patterns of analysis:

> The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes "a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser." Tex. Att'y Gen. No. JM-821 (1987), quoting ORD-228 (1979). That same opinion informs that "a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a 'governmental body.'" Finally, that opinion, citing others, advises that some entities, such as

> volunteer fire departments, will be considered governmental bodies if they provide "services traditionally provided by governmental bodies."

Kneeland, 850 F.2d at 228. The *Kneeland* court ultimately concluded that the National Collegiate Athletic Association (the "NCAA") and the Southwest Conference (the "SWC"), both of which received public funds, were not "governmental bodies" for purposes of the Act because both provided specific, measurable services in return for those funds. *See id.* at 230-31. Both the NCAA and the SWC were associations made up of both private and public universities. Both the NCAA and the SWC received dues and other revenues from their member institutions. *Id.* at 226-28. In return for those funds, the NCAA and the SWC provided specific services to their members, such as supporting various NCAA and SWC committees; producing publications, television messages, and statistics; and investigating complaints of violations of NCAA and SWC rules and regulations. *Id.* at 229-31. The *Kneeland* court concluded that although the NCAA and the SWC received public funds from some of their members, neither entity was a "governmental body" for purposes of the Act, because the NCAA and SWC did not receive the funds for their general support. Rather, the NCAA and the SWC provided "specific and gaugeable services" in return for the funds that they received from their member public institutions. *See id.* at 231; *see also A.H. Belo Corp. v. S. Methodist Univ.*, 734 S.W.2d 720 (Tex. App.—Dallas 1987, writ denied) (athletic departments of private-school members of SWC did not receive or spend public funds and thus were not governmental bodies for purposes of Act).

In exploring the scope of the definition of "governmental body" under the Act, this office has distinguished between private entities that receive public funds in return for specific, measurable services and those entities that receive public funds as general support. In Open Records Decision No. 228 (1979), we considered whether the North Texas Commission (the "NTC"), a private, nonprofit corporation chartered for the purpose of promoting the interests of the Dallas-Fort Worth metropolitan area, was a governmental body. *See* ORD 288 at 1. The NTC's contract with the City of Fort Worth obligated the city to pay the commission $80,000 per year for three years. *Id.* The contract obligated the NTC, among other things, to "[c]ontinue its current successful programs and implement such new and innovative programs as will further its corporate objectives and common City's interests and activities." *Id.* at 2. Noting this provision, this office stated that "[e]ven if all other parts of the contract were found to represent a strictly arms-length transaction, we believe that this provision places the various governmental bodies which have entered into the contract in the position of 'supporting' the operation of the [NTC] with public funds within the meaning of [the predecessor to section 552.003]." *Id.* Accordingly, the NTC was determined to be a governmental body for purposes of the Act. *Id.*

In Open Records Decision No. 602 (1992), we addressed the status of the Dallas Museum of Art (the "DMA") under the Act. The DMA was a private, nonprofit corporation that had contracted with the City of Dallas to care for and preserve an art collection owned by the City of Dallas and to maintain, operate, and manage an art museum. *See* ORD 602 at 1-2. The contract required the City of Dallas to support the DMA by maintaining the museum

building, paying for utility service, and providing funds for other costs of operating the museum. *Id.* at 2. We noted that an entity that receives public funds is a governmental body under the Act, unless the entity's relationship with the governmental body from which it receives funds imposes "a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser." *Id.* at 4. We found that "the [City of Dallas] is receiving valuable services in exchange for its obligations, but, in our opinion, the very nature of the services the DMA provides to the [City of Dallas] cannot be known, specific, or measurable." *Id.* at 5. Thus, we concluded that the City of Dallas provided general support to the DMA facilities and operation, making the DMA a governmental body to the extent that it received financial support from the City of Dallas. *Id.* Therefore, the DMA's records that related to programs supported by public funds were subject to the Act. *Id.*

We additionally note that the precise manner of public funding is not the sole dispositive issue in determining whether a particular entity is subject to the Act. *See* Attorney General Opinion JM-821 at 3. Other aspects of a contract or relationship that involve the transfer of public funds between a private and a public entity must be considered in determining whether the private entity is a "governmental body" under the Act. *Id.* at 4. For example, a contract or relationship that involves public funds, and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity, will bring the private entity within the definition of a "governmental body" under section 552.003(1)(A)(xii) of the Government Code. The overall nature of the relationship created by the contract is relevant in determining whether the private entity is so closely associated with the governmental body that the private entity falls within the Act. *Id.*

You explain the department is a private Texas non-profit corporation. You also explain, and provide documentation reflecting, that the department was awarded a grant from the Texas Veterans Commission (the "commission") to provide direct assistance to Texas veterans and their families. You explain, and the submitted contract reflects, the department may only use the grant funds for approved services benefitting Texas veterans and their families and the department is required to submit and receive commission approval on periodic expenditure and program performance reports.

In this instance, we find the department receives public funds from the commission in relation to the veterans services program and grant at issue. Based upon our review of the submitted information, we conclude the department and the commission share a common purpose and objective such that an agency-type relationship is created. *See* Open Records Decision No. 621 (1993) at 9. Accordingly, we conclude that the department falls within the definition of a "governmental body" under section 552.003(1)(A)(xii) of the Government Code to the extent it is supported by commission funds.

We note, however, that an organization is not necessarily a "governmental body" in its entirety. "The part, section, or portion of an organization, corporation, commission,

committee, institution, or agency that spends or that is supported in whole or in part by public funds" is a governmental body. Gov't Code § 552.003(1)(A)(xii); *see also* ORD 602 (only the records of those portions of the Dallas Museum of Art that were directly supported by public funds are subject to the Act). Thus, we find those records relating to the expenditure of the grant funds and the performance of the funded program are subject to disclosure. In this instance, the information at issue pertains to the grant funds or performance of the veterans services program. Therefore, we find the information at issue is subject to the Act, and the department is required to respond to the request for information.

We must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). While you raised section 552.101 of the Government Code within the ten-business-day time period as required by subsection 552.301(b), you did not raise sections 552.103, 552.114, 552.130, 552.137, and 552.140 of the Government Code until after the ten-business-day deadline had passed. Consequently, we find the department failed to comply with the procedural requirements of section 552.301(b) of the Government Code with respect to its claims under sections 552.103, 552.114, 552.130, 552.137, and 552.140 of the Government Code.

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its untimely claim, unless that claim is a compelling reason for withholding information from disclosure. *See generally id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also generally* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you seek to withhold the submitted information under section 552.103 of the Government Code, this exception does not make information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the information at issue may not be withheld under section 552.103 of the Government Code. However, sections 552.114, 552.130, 552.137, and 552.140 provide compelling reasons to withhold information. Additionally, we note portions of the submitted information may be subject to section 552.136 of the Government Code, which provides a compelling reason to overcome

the presumption of openness.[3] Accordingly, we will address the applicability of sections 552.114, 552.130, 552.136, 552.137, and 552.140 to the submitted information. We will also consider your timely-raised claim under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders federal tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Thus, the 1040 form, which we have marked, constitutes tax return information that is confidential under section 6103(a) of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides:

> (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
>
> (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
>
> (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in

[3]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

> Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician and information obtained from those records. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find the information we have marked under the MPA consists of confidential medical records. The department must withhold this information under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *See id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* ORD 600.

In Open Records Decision No. 373 (1983), this office determined financial information submitted by applicants for federally-funded housing rehabilitation loans and grants was "information deemed confidential" by a common-law right of privacy. The financial information at issue in Open Records Decision No. 373 included sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history. Additionally, in Open Records Decision No. 523 (1989), we held the credit reports, financial statements, and financial information included in loan files of individual veterans participating in the Veterans Land Program were excepted from disclosure by the common-law right of privacy. Similarly, we thus conclude financial information relating to an applicant for assistance under the department's veterans services program satisfies the first requirement of common-law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

The second requirement of the common-law privacy test requires the information not be of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 668. While the public generally has some interest in knowing whether public funds expended for housing assistance are being given to qualified applicants, we believe ordinarily this interest will not be sufficient to justify the invasion of the applicant's privacy that would result from disclosure

of information concerning his or her financial status. *See* ORD 373 (although any record maintained by governmental body is arguably of legitimate public interest, if only relation of individual to governmental body is as applicant for housing rehabilitation grant, second requirement of common-law privacy test not met). In particular cases, a requestor may demonstrate the existence of a public interest that will overcome the second requirement of the common-law privacy test. However, whether there is a public interest in this information sufficient to justify its disclosure must be decided on a case-by-case basis. *See* ORDs 523, 373.

Open Records Decision Nos. 373 and 523 draw a distinction between the confidential "background financial information furnished to a public body about an individual" and "the basic facts regarding a particular financial transaction between the individual and the public body." Open Records Decision Nos. 523, 385 (1983). Subsequent decisions of this office analyze questions about the confidentiality of background financial information consistently with Open Records Decision No. 373. *See* Open Records Decision Nos. 600, 545 (1990), 523, 481 (individual financial information concerning applicant for public employment is closed), 480 (1987) (names of students receiving loans and amounts received from Texas Guaranteed Student Loan Corporation are public); *see also* Attorney General Opinions H-1070 (1977), H-15 (1973) (laws requiring financial disclosure by public officials and candidates for office do not invade their privacy rights). *But see* Open Records Decision No. 602 at 5 (1992) (records related to salaries of those employees for whom the city pays a portion are subject to the Act). We note, however, this office has concluded the names and present addresses of current or former residents of a public housing development are not protected from disclosure under the common-law right to privacy. *See* Open Records Decision No. 318 (1982). Likewise, the amounts paid by a housing authority on behalf of eligible tenants are not protected from disclosure under privacy interests. *See* Open Records Decision No. 268 (1981); *see also* Open Records Decision Nos. 600 at 9-10, 545, 489 (1987), 480. Whether the public has a legitimate interest in an individual's sources of income must be determined on a case-by-case basis. *See* ORD 373 at 4; *see also* ORDs 600, 545. Upon review, we find portions of the submitted information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation.* However, we note the requestor has a right of access pursuant to section 552.023 to information pertaining to herself. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds information is considered confidential under privacy principles). Accordingly, the department must withhold the information we have marked that pertains to individuals other than the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information to be highly intimate or embarrassing and of no legitimate public concern. Accordingly, none of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the constitutional right to privacy. Constitutional privacy protects two kinds of interests. *See Whalen v. Roe*, 429

U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5, 478 at 4 (1987), 455 at 3-7. The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir.1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). In this instance, you have not demonstrated how constitutional privacy applies to the remaining information. Consequently, the department may not withhold the remaining information under section 552.101 in conjunction with constitutional privacy.

Section 552.114(a) of the Government Code excepts from disclosure student records "at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). This office has determined the same analysis applies under section 552.114 and FERPA. FERPA governs the availability of student records held by educational institutions or agencies receiving federal funds. We note section 552.114 and FERPA apply only to student records in the custody of an educational institution and records directly transferred from an educational institution to a third party. *See* 34 C.F.R. § 99.33(a)(2). You contend some of the remaining information is confidential under section 552.114. However, the department is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth not an "educational agency" for purposes of FERPA). Further, the department does not indicate any of the submitted information was received from an educational institution. We therefore conclude the department may not withhold any of the information at issue on the basis of section 552.114 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her motor vehicle record information under section 552.023 of the Government Code, and it may not be withheld from this requestor under section 552.130. *See id.* § 552.023(a). Accordingly, the department must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). The requestor has a right of access to her own account information pursuant to section 552.023 of the Government Code, and it may

not be withheld from this requestor under section 552.136. *See id.* § 552.023(a); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the department must withhold the information we marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees.

We note the information you have marked includes the requestor's personal e-mail address, to which she has a right of access under section 552.137(b) of the Government Code. *See id.* § 552.137(b) (personal e-mail address of member of public may be disclosed if owner of address affirmatively consents to its disclosure). Accordingly, this information may not be withheld from her under section 552.137. Accordingly, the department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release. However, none of the remaining information at issue consists of e-mail addresses subject to section 552.137. Accordingly, the department may not withhold any of the remaining information at issue under section 552.137 of the Government Code.

Section 552.140 of the Government Code provides a military veteran's DD-214 form or other military discharge record that is first recorded with, or that otherwise first comes into the possession of, a governmental body on or after September 1, 2003, is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). The information at issue reflects it came into the department's possession after September 1, 2003. However, section 552.140(c)(1) provides that a governmental body must release a discharge form to the veteran who is the subject of the record. *Id.* § 552.140(c)(1). Therefore, the requestor has a right of access to her DD-214 form under section 552.140(c)(1) of the Government Code. Accordingly, we conclude the department must withhold the military discharge records we have marked that pertain to individuals other than the requestor under section 552.140 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, section 159.002 of the Occupations Code, and common-law privacy. The department must withhold the information we have marked under

sections 552.130, 552.136, 552.137, and 552.140 of the Government Code. The department must release the remaining information.[4]

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 554393

Enc. Submitted documents

c: Requestor
(w/o enclosures)

[4]We note the requestor has a right of access beyond that of the general public to some of the information being released that pertains to herself, which is normally excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, section 552.130 of the Government Code, section 552.136, section 552.137, and section 552.140 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4. Accordingly, the department must again seek a decision from this office if it receives another request for this information from another requestor. We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

Cause No. D-1-GN-15-000888

VETERANS OF FOREIGN WARS, DEPARTMENT OF TEXAS, et al., *Plaintiffs,*	§	IN THE DISTRICT COURT OF
v.	§	53rd JUDICIAL DISTRICT
KEN PAXTON, ATTORNEY GENERAL OF TEXAS, *Defendant.*	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which the Veterans of Foreign Wars, Department of Texas, and the Veterans of Foreign Wars Foundation (collectively the "VFW"), sought to withhold certain information. All matters in controversy between Plaintiff, the VFW, and Defendant, Ken Paxton, Attorney General of Texas ("Attorney General"), have been resolved by settlement, a copy of which is attached hereto as Exhibit "A", and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Texas Government Code section 552.325(c), the Attorney General sent certified letters to the requestor, Ms. Zenobia C. Joseph, on Feb. 21, 2019, informing her of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that the VFW is not a governmental body and need not provide information at issue. The requestor was also informed of her right to intervene in the suit to contest the withholding of this information. Verification of the certified mailing of this notification is attached to this judgment.

ENTERED
MR

The requestor has not filed a motion to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. Under Texas Government Code section 552.003 in conjunction with *Greater Houston Partnership v. Paxton*, 468 S.W.3d 51 (Tex. 2015), the VFW is not a governmental body under the PIA. Therefore, the VFW is not required to produce any information pursuant to the request for public information that initiated this lawsuit.
2. All court cost and attorney fees are taxed against the parties incurring the same;
3. All relief not expressly granted is denied; and
4. This Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between the VFW and the Attorney General and is a final judgment.

SIGNED the 5 day of April, 2019.

PRESIDING JUDGE

AGREED:

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ATTORNEY FOR PLAINTIFFS

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Cause No. D-1-GN-15-000888

VETERANS OF FOREIGN WARS, DEPARTMENT OF TEXAS, et al., *Plaintiffs*,	§	IN THE DISTRICT COURT OF
v.	§	53rd JUDICIAL DISTRICT
KEN PAXTON, ATTORNEY GENERAL OF TEXAS, *Defendant.*	§	TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between the Veterans of Foreign Wars, Department of Texas, and the Veterans of Foreign Wars Foundation (collectively the "VFW"), and Ken Paxton, Attorney General of Texas ("the Attorney General"). This Agreement is made on the terms set forth below.

Background

This is a Public Information Act ("PIA") lawsuit, challenging Open Records Letter Ruling OR2014-03558, in which the Open Records Division of the Attorney General ("ORD") determined the VFW was a governmental body for purposes of the PIA and determined that the VFW must comply with a request for information under the PIA.

After this lawsuit was filed, the Texas Supreme Court released its opinion in *Greater Houston Partnership v. Paxton*, in which the Court established a new standard for determining whether an entity is a governmental body for purposes of the PIA. 468 S.W.3d 51 (Tex. 2015). The Attorney General agrees that, under this new standard, the VFW does not meet the definition of governmental body. Therefore, the parties wish to resolve this case without further litigation.

Texas Government Code section 552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this lawsuit may be withheld.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. Under Texas Government Code section 552.003 in conjunction with *Greater Houston Partnership v. Paxton*, 468 S.W.3d 51 (Tex. 2015), the VFW is not a governmental body under the PIA. Therefore, the VFW is not required to produce any information pursuant to the request for public information that initiated this lawsuit.

2. The Attorney General agrees that he will notify the requestor, as required by Texas Government Code section 552.325(c), of the proposed settlement and of her right to intervene to contest the VFW's right to withhold the information.

3. A final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

4. Each party to this Agreement will bear its own costs, including attorney fees relating to this litigation.

5. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

6. The VFW warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the VFW has against the Attorney General arising out of the matters described in this Agreement.

7. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against the VFW arising out of the matters described in this Agreement.

8. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

VETERANS OF FOREIGN WARS, DEPARTMENT OF TEXAS AND THE VETERANS OF FOREIGN WARS FOUNDATION

By: _____
name: Jennifer S. Riggs
firm: Riggs & Ray, P.C.
Date: Feb. 11, 2019

KEN PAXTON, ATTORNEY GENERAL OF TEXAS

By: _____
name: Kimberly Fuchs
title: Assistant Attorney General, Administrative Law Division
Date: Feb. 20, 2019