



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.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 19, 2015

Mr. Herb Hancock
Karnes County Attorney
210 West Calvert Avenue, Suite 110
Karnes City, Texas 78118

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

OR2015-09751

Dear Mr. Hancock:

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# 564166.

The Karnes County Sheriff's Office (the "sheriff's office") received a request for all information related to an incident at a specified address on a specified date. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.1085, 552.117, 552.1175, 552.130, 552.132, 552.1325, 552.147, and 552.152 of the Government Code. We have considered the claimed exceptions.

We must address the procedural obligations of the sheriff's office under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). The sheriff's office states it received the request for information on February 26, 2015. However, as of the date of this letter, the sheriff's office has not submitted for our review written comments stating the reasons why the stated exceptions apply, a copy of the written request for information, or a copy or representative sample of the information requested. Consequently, we find the sheriff's office failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information

from disclosure. *See 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* 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. Open Records Decision No. 150 at 2 (1977). Because the sheriff's office has failed to comply with the procedural requirements of the Act, it has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the sheriff's office also raises mandatory exceptions to disclosure, because the sheriff's office has not submitted the requested information for our review, we have no basis for finding any of the information is excepted from disclosure or confidential by law. Thus, we have no choice but to order the sheriff's office to release the requested information pursuant to section 552.302. If the sheriff's office believes the information is confidential and may not lawfully be released, it must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 564166

c: Requestor

JUL 26 2018

At 2:05 p M.
Velva L. Price, District Clerk

Cause No. D-1-GN-15-002095

KARNES COUNTY,
Plaintiff,

v.

KEN PAXTON, ATTORNEY GENERAL
OF TEXAS,
Defendant.

§
§
§
§
§
§
§

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

345th JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which Karnes County sought to withhold certain information. All matters in controversy between Plaintiff, Karnes County, 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 a certified ^{email} ^{KF} letter to the requestor, Ms. Molly Hennessy-Fiske, on July 3, 2018, informing her of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that Karnes County will withhold the 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 motion.

The requestor has not filed a motion to intervene.

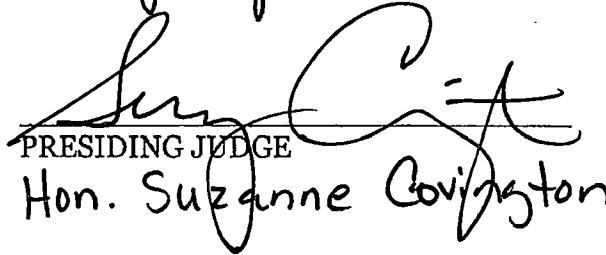


After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. Karnes County and the Attorney General have agreed that in accordance with the PIA and under the facts presented, the information at issue is excepted from disclosure pursuant to Texas Government Code section 552.101 in conjunction with section 58.008(b) of the Texas Family Code;
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 Karnes County and the Attorney General and is a final judgment.

SIGNED the 26th day of July, 2018.


PRESIDING JUDGE
Hon. Suzanne Covington

AGREED:



KIMBERLY FUCHS

State Bar No. 24044140

Assistant Attorney General

Administrative Law Division

P. O. Box 12548, Capitol Station

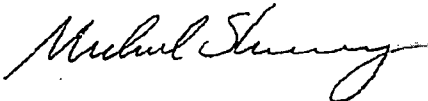
Austin, Texas 78711-2548

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Kimberly.Fuchs@oag.texas.gov

ATTORNEY FOR DEFENDANT, KEN PAXTON



MICHAEL SHAUNESSY

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mshaunessy@mcginnislaw.com

ATTORNEY FOR PLAINTIFF

A

Cause No. D-1-GN-15-002095

KARNES COUNTY, <i>Plaintiff,</i>	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
KEN PAXTON, ATTORNEY GENERAL OF TEXAS, <i>Defendant.</i>	§	
	§	
	§	345th JUDICIAL DISTRICT

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Karnes County 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) request, challenging Open Records Letter Ruling OR2015-09751, in which the Open Records Division of the Attorney General (ORD) required the release of the information at issue in this lawsuit.

After this lawsuit was filed, Karnes County submitted information and briefing to the Attorney General establishing that Texas Government Code section 552.101 in conjunction with Texas Family Code section 58.008(b) makes the information at issue confidential.

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. The parties wish to resolve this matter without further litigation.

Terms

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

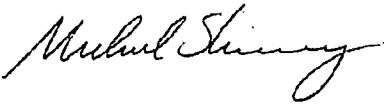
1. Karnes County and the Attorney General have agreed that in accordance with the PIA and under the facts presented, the information at issue is excepted from disclosure pursuant to Texas Government Code section 552.101 in conjunction with section 58.008(b) of the Texas Family Code;
2. The Attorney General agrees that he will also 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 Karnes County'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 their 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. Karnes County 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 Karnes County 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 Karnes County arising out of the matters described in this Agreement.

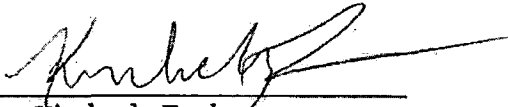
8. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

KARNES COUNTY

KEN PAXTON, ATTORNEY GENERAL
OF TEXAS

By: 
name: Michael Shaunessy
firm: McGinnis Lochridge

Date: June 27, 2018

By: 
name: Kimberly Fuchs
title: Assistant Attorney General,
Administrative Law Division

Date: July 2, 2018