



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

September 18, 2015

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

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

OR2015-19528

Dear Ms. Silver:

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# 580175.

The City of Dallas (the "city") received a request for information pertaining to a specified city council meeting agenda item. The city claims the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code and privileged under Texas Rule of Evidence 503 and Texas Disciplinary Rule of Professional Conduct 1.05. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, the city acknowledges, and we agree, it failed to comply with the procedural requirements of section 552.301(e) of the Government Code. *See* Gov't Code § 552.301(e). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982).


Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This office has concluded section 552.101 does not encompass discovery privileges. Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990) (predecessor statute). Nevertheless, the city asserts Exhibit B is confidential under the attorney-client privilege for purposes of section 552.101 on the basis of the decisions in *Abbott v. City of Dallas*, 453 S.W.3d 580 (Tex. App.—Austin 2014, pet. filed) and *City of Dallas v. Paxton*, No. 13-13-00397-CV, 2015 WL 601974 (Tex. App.—Corpus Christi Feb. 12, 2015, pet. filed) (mem. op.). However, we note a petition for review for the *Abbott* decision was filed with the Texas Supreme Court on March 9, 2015, and a petition for review for the *Paxton* decision was filed with the Texas Supreme Court on March 26, 2015. Thus, we find these decisions are limited to the facts and information at issue in the underlying letter rulings, and do not apply to the information currently at issue. Accordingly, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503 or Texas Disciplinary Rule of Professional Conduct 1.05. In addition, sections 552.107 and 552.111 of the Government Code are discretionary in nature; they serve only to protect a governmental body’s interests. As such, the city’s claims under these sections are not compelling reasons to overcome the presumption of openness. *See* Open Records Decision 676 at 12 (attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 constitutes compelling reason to withhold information under section 552.302 only if information’s release would harm third party), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, the city may not withhold any of the submitted information under section 552.107 or 552.111. Consequently, the city must release the requested information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 580175

Enc. Submitted documents

c: Requestor
(w/o enclosures)

AUG 28 2019

At 8:51 A.M.
Velva L. Price, District Clerk

Cause No. D-1-GN-15-004487

CITY OF DALLAS,
Plaintiff,

v.

KEN PAXTON, ATTORNEY
GENERAL OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

419th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This is a lawsuit under the Public Information Act (PIA), Texas Government Code chapter 552, by which Plaintiff City of Dallas sought declaratory relief from open records rulings OR2015-19528, OR2015-23745, and OR2015-26494 of Defendant Ken Paxton, Attorney General of Texas. The rulings required the City to release information it claimed was subject to the attorney-client privilege because the City did not timely request an attorney general decision and failed to demonstrate a compelling reason to withhold the requested information. See Tex. Gov't Code § 552.302.

During the pendency of the lawsuit, the Texas Supreme Court issued *Paxton v. City of Dallas*, 509 S.W.3d 247 (Tex. 2017), which held “a ‘compelling reason’ to withhold confidential attorney-client communications exists and, absent waiver, rebuts the presumption that the information protected by the privilege is ‘subject to required public disclosure.’” *Paxton v. City of Dall.*, 509 S.W.3d 247, 267–68 (Tex. 2017). Consistent with the *Paxton* decision, the parties agree that portions of the requested information are attorney-client



privileged communications and may be withheld from the requestor pursuant to Texas Government Code section 552.107 and *Paxton v. City of Dallas*. Pursuant to section 552.325(c) of the Texas Government Code, the Attorney General may enter into a settlement that allows all or part of the information at issue in this lawsuit to be withheld. The parties agree that settlement is appropriate.

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. *See* Tex. Gov't Code § 552.325. The Attorney General represents to the Court that in compliance with Texas Government Code section 552.325(c), the Attorney General sent a letter by certified mail and electronic mail to the requestors, Beryl Lipton, Clayton J. Callen, and Ashley Yarberry, on July 29, 2019, providing reasonable notice that the Agreed Final Judgment would be presented to the court on or after this day. The requestors were informed of the parties' agreement that the City must withhold the information at issue. The requestors were also informed of their right to intervene in the suit to contest this Agreed Final Judgment. The requestors have 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 this Agreed Final Judgment is appropriate.

IT IS THEREFORE ORDERED AND DECLARED that:

1. Pursuant to Texas Government Code section 552.107 and *Paxton v. City of Dallas*, 509 S.W.3d 247 (Tex. 2017), the Plaintiff must withhold from the requestor the attorney-client privileged communications identified as Exhibits B and D in the information produced to the Attorney General under the March 1, 2017 Agreed Protective Order.

2. The City must release or withhold all other information responsive to requests for information in compliance with letter rulings OR2015-19528, OR2015-23745, and OR2015-26494. Further, the Office of the Attorney General will not consider these three rulings as “previous determinations” under Texas Government Code section 552.301(a), (f); and, if the precise information is requested again, the City may ask for a decision from the Attorney General under Tex. Gov’t Code § 552.301(g).

3. All court costs and attorney fees are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

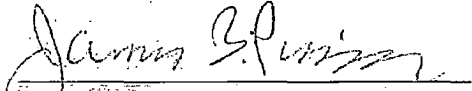
5. This Order disposes of all claims between the parties and is a final judgment.

Signed this the 28 day of August, 2019.



PRESIDING JUDGE
AMY CLARK MEACHUM

AGREED:



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