



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 24, 2015

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

Ms. Ann-Marie Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2015-20050

Dear Ms. Sheely:

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# 580616.

The Travis County District Attorney's Office (the "district attorney's office") received a request for (1) all current and past contracts, including any amendments and addendums, between Texas Mutual Insurance Company ("Texas Mutual") and the district attorney's office; (2) any documents, including e-mails, relating to the negotiations of any contract between Texas Mutual and the district attorney's office; and (3) any e-mails or other correspondence between the district attorney's office and Texas Mutual regarding the decision to not prosecute a case. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the district attorney's office's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow

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

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). Further, 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 id.* § 552.301(e). The district attorney's office received the request for information on June 22, 2015. On July 6, 2015, the district attorney's office provided the requestor with a cost estimate for providing requested records pursuant to section 552.2615 of the Government Code. *See id.* § 552.2615 (providing governmental body shall provide requestor with estimate of charges if charges exceed \$40). You inform us payment was made by the requestor on July 7, 2015. On July 21, 2015, the district attorney's office requested a decision from this office pursuant to section 552.301(b) of the Government Code. *See id.* § 552.301(b).

Section 552.263(e) provides when a governmental body requires a deposit or bond for anticipated costs, the request for information is considered received on the date the governmental body receives the deposit or bond. *See id.* § 552.263(e). Here, the district attorney's office sent an estimate pursuant to section 552.2615, and did not require a deposit or bond from the requestor pursuant to section 552.263. We note section 552.2615 provides the submission of an estimate of charges to the requestor does not toll the governmental body's deadlines to ask for an attorney general decision under section 552.301. *See id.* § 552.2615(g) (providing "[t]he time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G"). Accordingly, we find the district attorney's office's deadlines under section 552.301 were not tolled. As noted above, the district attorney's office received the request for information on June 22, 2015. The district attorney's office's ten- and fifteen-business-day deadlines were July 7, 2015, and July 14, 2015, respectively. In this instance, as noted above, the district attorney's office requested an opinion from this office on July 21, 2015, and submitted the information required by section 552.301(e) on July 28, 2015. Consequently, we find the district attorney's office failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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 (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); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you assert the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code, these are discretionary exceptions to disclosure and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions, governmental body may waive section 552.111), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, in failing to comply with the requirements of section 552.301, the district attorney's office has waived its claims under sections 552.108 and 552.111. Thus, the district attorney's office may not withhold any of the submitted information under section 552.108 or section 552.111 of the Government Code. However, portions of the submitted information may be subject to section 552.117 of the Government Code.² As section 552.117 can provide a compelling reason to overcome the presumption of openness under section 552.302, we will consider its applicability to the submitted information.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a). We note section 552.117 also encompasses a personal pager number, unless the pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5–7 (1988) (statutory predecessor to section 552.117 not applicable to pager number provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Upon review, we find the pager number we have marked is subject to section 552.117(a)(1). To the extent the individual whose information is at issue timely elected to keep this type of information confidential under section 552.024 of the Government Code and the pager service is not paid for by a governmental body, the district attorney's office must withhold the pager number we marked under section 552.117(a)(1)

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

of the Government Code. As no other exceptions to disclosure are raised, the remaining information must be released.

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,

A handwritten signature in cursive script that reads "Cole Hutchison".

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/som

Ref: ID# 580616

Enc. Submitted documents

c: Requestor
(w/o enclosures)

OCT 11 2018

At 8:55 A M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-15-004596

MARGARET MOORE, TRAVIS	§	IN THE DISTRICT COURT OF
COUNTY DISTRICT ATTORNEY,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	353rd JUDICIAL DISTRICT
	§	
KEN PAXTON, STATE OF TEXAS	§	
ATTORNEY GENERAL,	§	
<i>Defendant</i>	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This is a lawsuit brought under the Texas Public Information Act (PIA), Texas Government Code chapter 552. All matters in controversy between Plaintiff Margaret Moore, Travis County District Attorney (the District Attorney), Defendant Ken Paxton, State of Texas Attorney General (the Attorney General), and Intervenor Texas Mutual Insurance Company (Texas Mutual) have been resolved, and the Parties agree to the entry and filing of this Agreed Final Judgment. *See* Exhibit A (Settlement Agreement).

Pursuant to Tex. Gov't Code § 552.325(d), the Court shall allow the requestor a reasonable period of time to intervene after the Attorney General attempts to notify the requestor of the proposed settlement. The Attorney General represents to the Court and the Court hereby takes judicial notice that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent notice by certified mail the requestor's last known address on October 8, 2018, providing reasonable notice of the requestor's right to intervene in the suit. *See* Ex. B (proof of mailing). The requestor was informed of the proposed Settlement Agreement under which the District Attorney must withhold a portion of the information at issue in this lawsuit, as agreed upon by the Parties. The requestor was also informed of the right to intervene in this lawsuit to contest the



withholding of the information. The requestor has informed the Attorney General he does not intend to intervene in this lawsuit.

After considering the agreement of the Parties and the law, the Court finds entry of this Agreed Final Judgment is appropriate, disposing of all claims between the Parties in this suit.

THE COURT THEREFORE FINDS AND ORDERS THAT:

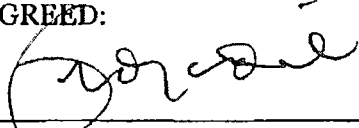
1. The Parties have agreed that, in accordance with the PIA and under the facts presented, a portion of the information at issue in this suit is confidential and excepted from disclosure pursuant to Texas Insurance Code section 2054.008 (the Excepted Information);
2. The District Attorney must withhold the Excepted Information described in Paragraph 1 and must release any remaining requested information not determined to be excepted from required disclosure by Open Records Letter Ruling OR2015-20050, to the extent such information has not already been disclosed;
3. All court cost and attorney fees are taxed against the party incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between the District Attorney, the Attorney General, and Texas Mutual in this cause, and is a final judgment.

Signed this 11th day of October, 2018

JUDGE PRESIDING

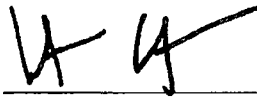
KARIN CRUMP

AGREED:



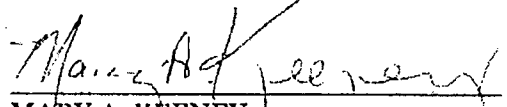
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ATTORNEY FOR MARGARET MOORE, TRAVIS
COUNTY DISTRICT ATTORNEY



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ATTORNEY FOR KEN PAXTON, STATE OF
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ATTORNEY FOR TEXAS MUTUAL INSURANCE
COMPANY



CAUSE NO. D-1-GN-15-004596

MARGARET MOORE, TRAVIS	§	IN THE DISTRICT COURT OF
COUNTY DISTRICT ATTORNEY,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	353rd JUDICIAL DISTRICT
	§	
KEN PAXTON, STATE OF TEXAS	§	
ATTORNEY GENERAL,	§	
<i>Defendant</i>	§	TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made by and between Plaintiff Margaret Moore, Travis County District Attorney (the District Attorney), Defendant Ken Paxton, Texas Attorney General (the Attorney General), and Intervenor Texas Mutual Insurance Company (Texas Mutual). The Agreement is made on the terms set forth below.

BACKGROUND

The District Attorney received a written request for government records under the Texas Public Information Act (PIA). The request sought several categories of information concerning the contractual agreement between the District Attorney and Texas Mutual, including emails and other correspondence relating to (1) contract negotiations between the two and (2) prosecutors’ decisions whether to pursue certain cases. The District Attorney sought an open records ruling from the Attorney General pursuant to Texas Government Code section 552.301. The Attorney General issued Open Records Letter Ruling OR2015-20050 (the Letter Ruling) in response to the District Attorney’s request. The ruling concluded, in part relevant to this lawsuit, that portions of the requested records were not excepted from required disclosure and must be released to the requestor (the “Information at Issue”).

The District Attorney disputed the Attorney General's determination and filed suit seeking declaratory relief from the Letter Ruling pursuant to Government Code section 552.324. Texas Mutual subsequently intervened under Government Code section 552.325 to dispute the disclosure of the Information at Issue. Government Code section 552.325(c) authorizes the Attorney General to enter into settlement in a lawsuit brought under the PIA. The Parties wish to resolve this matter without further litigation.

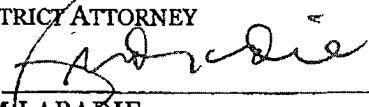
TERMS

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

1. Eight pages of the Information at Issue consist of information compiled or maintained by Texas Mutual with respect to a Texas Mutual investigation authorized by law (the Excepted Information). The Parties agree the Excepted Information is confidential under Texas Insurance Code section 2054.008.
2. The District Attorney (1) must withhold the Excepted Information from public disclosure, and (2) must release the remaining portion of the Information at Issue to the requestor.
3. Pursuant to Government Code section 552.325(c), the Attorney General will notify the requestor of the Agreement and of the requestor's right to intervene in the lawsuit to contest the Agreement and the Court's entry of any agreed final judgment in this suit.
4. The District Attorney, the Attorney General, and Texas Mutual agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the Court for approval, on the uncontested docket, after notice has been provided to the requestor. The Agreement will be attached to the agreed final judgment as "Exhibit A."
5. If the requestor intervenes to contest the Agreement, a final judgment entered in this lawsuit will prevail over the Agreement, to the extent of any conflict.
6. Each party to the Agreement will bear its own fees and costs, including attorneys' fees relating to this litigation.

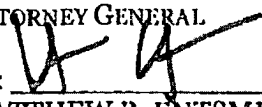
7. The terms of the Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in the Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to the Agreement.
8. The District Attorney warrants that her undersigned representative is duly authorized to execute the Agreement on the District Attorney's behalf and that her representative has read the Agreement and fully understands it to be a compromise and settlement and release of all claims that the District Attorney has against the Attorney General or Texas Mutual arising out of the matters described herein.
9. The Attorney General warrants that his undersigned representative is duly authorized to execute the Agreement on the Attorney General's behalf and his representative has read the Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against the District Attorney or Texas Mutual arising out of the matters described in this Agreement.
10. Texas Mutual warrants that its undersigned representative is duly authorized to execute the Agreement on Texas Mutual's behalf and its representative has read the Agreement and fully understands it to be a compromise and settlement and release of all claims that Texas Mutual has against the Attorney General or the District Attorney arising out of the matters described in this Agreement.
11. The Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign the Agreement.

MARGARET MOORE, TRAVIS COUNTY
DISTRICT ATTORNEY

By: 
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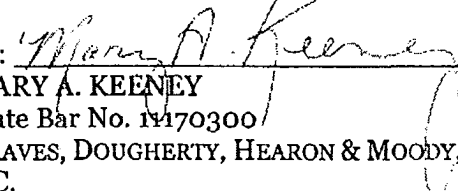
Date: 9 October 2018

KEN PAXTON, STATE OF TEXAS
ATTORNEY GENERAL

By: 
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Date: October 8, 2018

TEXAS MUTUAL INSURANCE COMPANY

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Date: October 8, 2018