



**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

December 16, 2015

Ms. Heather Silver  
Assistant City Attorney  
Office of the City Attorney  
City of Dallas  
1500 Marilla, 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.**

OR2015-26494

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# 590809.

The City of Dallas (the "city") received a request for all e-mails sent to several named individuals during a specified time period.<sup>1</sup> You state the city will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.117, and 552.137 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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<sup>1</sup>You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>Although you also raise Texas Rule of Evidence 503, we note the proper exception to raise when asserting the attorney-client privilege in this instance is section 552.107 of the Government Code, respectively. *See* Open Records Decision Nos. 676 at 1-2 (2002).

<sup>3</sup>We 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.

Initially, we note the submitted information contains a peace officer's Texas Commission on Law Enforcement ("commission") identification number.<sup>4</sup> Section 552.002(a) defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body; for a governmental body and the governmental body owns, has a right of access to, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body. Gov't Code. § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. ORD 581 at 5. We understand an officer's commission identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic database, and may be used as an access device number on the commission's website. Accordingly, we find the officer's commission identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the commission identification number is not subject to the Act and the city is not required to release it to the requestor.<sup>5</sup>

Next, we must address the city'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(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 city received the request for information on September 24, 2015. You do not inform us the city was closed for any business days between September 24, 2015, and October 15, 2015. Accordingly, you were required to provide the information required by section 552.301(e) by October 15, 2015. However, the envelope in which the city provided the information required by section 552.301(e) was postmarked October 16, 2015. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United

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<sup>4</sup>The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

<sup>5</sup>As we are able to make this determination, we do not address your argument against the disclosure of this information.

States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the city failed to comply with the procedural requirements mandated by 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 requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. The city claims sections 552.107 and 552.108 of the Government Code for some of the submitted information. However, these exceptions are discretionary in nature. They serve to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information. *See* Gov't Code § 552.007; Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.107 or section 552.108 of the Government Code. However, sections 552.101, 552.117, and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness. Therefore, we will address the applicability of these exceptions to the submitted information.

You seek to withhold the information submitted as Exhibit E under section 552.101 of the Government Code in conjunction with section 418.181 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. 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 exception encompasses information that is made confidential by other statutes, including section 418.181 of the HSA. Section 418.181 provides as follows:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

*Id.* § 418.181. *See generally id.* § 421.001 (defining critical infrastructure to include "all public or private assets, systems, and functions vital to the security, governance, public health and safety, and functions vital to the state or the nation"). The fact information may be related to a governmental body's emergency response preparedness or security concerns does not make such information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its

protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You argue the information submitted as Exhibit E "reveals response techniques and mitigation techniques that are used by law enforcement." You argue the techniques for future incidents "could be hindered if this information was released to the public." Upon review, we find you have failed to demonstrate how any of the information at issue identifies the technical details of particular vulnerabilities of critical infrastructure. Consequently, the city may not withhold any portion of Exhibit E under section 552.101 in conjunction with section 418.181 of the Government Code.

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the commission under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a commission member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. You argue the responsive information in Exhibit D is confidential pursuant to section 1701.454 of the Occupations Code. Upon review, we find you have not demonstrated any portion of the information at issue consists of information that was submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code. Accordingly, the city may not withhold any portion of Exhibit D under section 552.101 in conjunction with section 1701.454 of the Occupations Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Therefore, to the extent the individual whose information is at issue timely

requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service, the city must withhold the information you have marked under section 552.117(a)(1) of the Government Code. Conversely, if the individual at issue did not timely request confidentiality under section 552.024 or a governmental body pays for the cellular telephone service, the city may not withhold the information you marked under section 552.117(a)(1).

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the city must withhold the personal e-mail address you have marked in Exhibit F under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and a governmental body does not pay for the cellular telephone service, the city must withhold the information you have marked under section 552.117(a)(1) of the Government Code. The city must withhold the personal e-mail address you have marked in Exhibit F under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The city must release the remaining responsive 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 590809

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;

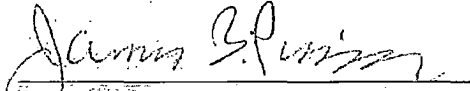
4. All relief not expressly granted is denied; and

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

Signed this the 28 day of August, 2019.

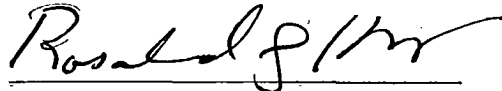
  
\_\_\_\_\_  
PRESIDING JUDGE  
**AMY CLARK MEACHUM**

AGREED:



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