



**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 5, 2016

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

Ms. Leena Chaphekar  
Assistant General Counsel  
Employees Retirement System of Texas  
P.O. Box 13207  
Austin, Texas 78711-3207

OR2016-10293

Dear Ms. Chaphekar:

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# 608757.

The Employees Retirement System of Texas ("ERS") received a request for (1) all e-mails sent to or from a named individual during a specified time frame; (2) all e-mails mentioning a named individual during a specified time frame; (3) all paper correspondence received from a named individual during a specified time frame; (4) all e-mails sent to or from any of eighteen named individuals during a specified time frame; (5) all e-mails sent to or from a specified domain during a specified time frame; (6) all public information requests received by ERS mentioning a named individual, and ERS's responses to those requests, during a specified time frame; and (7) all e-mails sent to or from a named individual during a specified time frame. You claim the requested information is excepted from disclosure under sections 552.101 through 552.147 of the Government Code. We have considered the exceptions you claim.

Initially, we note ERS seeks to withdraw its request for an open records decision because it asserts the request for information was withdrawn by operation of law when the requestor failed to timely respond to a cost estimate for providing the requested records. Upon review of a copy of the cost estimate, we find it does not comply with the requirements of section 552.2615(a) of the Government Code. Gov't Code § 552.2615(a). Accordingly, we

conclude the request for information was not withdrawn by operation of law. *See id.* § 552.2615(b).

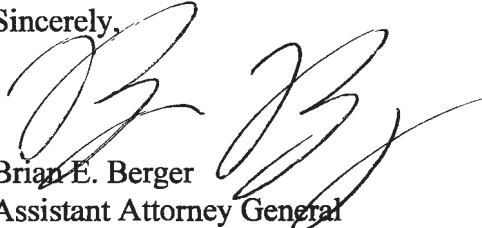
Next, we must address ERS's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) 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 id.* § 552.301(e). ERS received the request for information on February 12, 2016. However, as of the date of this letter, ERS has not submitted for our review written comments stating the reasons why the stated exceptions apply or a copy or representative sample of the information requested. Consequently, we find ERS 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 ERS 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 ERS also raises mandatory exceptions to disclosure, because ERS 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 ERS to release the requested information pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you 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](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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 608757

c: Requestor

APR 06 2017

At 8:58 AM.  
Veiva L. Price, District Clerk

Cause No. D-1-GN-16-002395

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

**AGREED FINAL JUDGMENT**

This cause is an action under the Public Information Act (PIA), Texas Government Code chapter 552, in which Plaintiff Employees Retirement System of Texas (ERS) sought to challenge an open records ruling OR2016-10293 of Defendant Ken Paxton, Attorney General of Texas who ordered release of the requested information. This lawsuit arose from two requests for public information from Ms. Chanelle Yang on February 12, 2016 and April 19, 2016 for certain emails and other documents between ERS and certain individuals.

In response to Ms. Yang's February 12, 2016 request for information, ERS sought a ruling from the Attorney General, who ruled that ERS did not comply with Texas Government Code sections 552.2615(a) and 552.301(e), and the requested information must be released to the requestor. *See* Tex. Att'y Gen. OR2016-10293. ERS also sought a ruling from the Attorney General regarding Ms. Yang's April 19, 2016 request for the same information, but the Attorney General did not issue a decision because this lawsuit was pending in Travis County district court.

During litigation, ERS established the applicability of Texas Government Code section 552.143 and Texas Rule of Evidence 503. The Attorney General and ERS agree that portions of the requested information are protected from disclosure. Pursuant to Texas Government Code section 552.325(c), the Attorney General may enter into a settlement that allows all or part of the information at issue in this lawsuit to be withheld. *See* Tex. Gov't Code § 552.325(c). All matters in controversy between ERS and the Attorney General in this lawsuit have been settled and resolved, and the parties agree to the entry and filing of this 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 section 552.325(c), the Attorney General sent a letter by certified mail and electronic mail to the requestor, Ms. Chanelle Yang, on March 16, 2017, providing reasonable notice of the this proposed settlement. The requestor was informed of the parties' agreement that ERS must withhold the information at issue. The requestor was also informed of his right to intervene in the suit to contest the ERS's right to withhold the information. 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 this Agreed Final Judgment is appropriate, disposing of all claims between these parties.

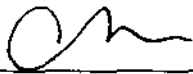
THEREFORE, THE PARTIES AGREE, AND THE COURT ADJUDGES,  
ORDERS AND DECLARES THAT:

1. ERS must withhold certain investment information and attorney-client privilege communications, consistent with ERS's representative sample Exhibit 2 and 3, from the information responsive to Ms. Chanelle Yang's February 12, 2016 and April 19, 2016 requests for information pursuant to Texas Government Code section 552.143 and Texas Rule of Evidence 503;
2. All other requested information must be released in compliance with open records ruling OR2016-10293;
3. All court cost and attorney fees are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims of all parties in this cause and is a final judgment.

SIGNED the 6 day of April, 2017.

  
\_\_\_\_\_  
PRESIDING JUDGE

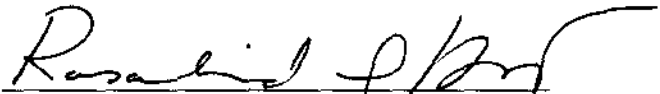
AGREED:



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**ATTORNEYS FOR PLAINTIFF  
EMPLOYEES RETIREMENT SYSTEM OF  
TEXAS**

DATE: 03/16/2017



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**ATTORNEY FOR DEFENDANT  
ATTORNEY GENERAL OF TEXAS**

DATE: 03/16/2017