



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

June 7, 2016

Ms. Rebecca Bailey Weimer
Counsel for the Houston Independent School District
Thompson & Horton, L.L.P.
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027-7528

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

OR2016-12874

Dear Ms. Weimer:

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# 613385.

The Houston Independent School District (the "district"), which you represent, received several requests from the same requestor for all e-mails between twenty-five named individuals during a specified period of time. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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

¹Although you also raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Accordingly, we do not address your argument under section 552.101.

²We 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.

to decide whether requested information is excepted from public disclosure. 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 district received the requests for information on March 9, 2016. As of the date of this letter, you have not submitted to this office copies of the written requests for information. Accordingly, we conclude the district failed to comply with the requirements of section 552.301.

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 district claims sections 552.107 and 552.111 of the Government Code for 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* Open Records Decision No. 676 at 6 (section 552.107(1) is not other law for purposes of section 552.022), 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). Accordingly, no portion of the submitted information may be withheld under section 552.107 or section 552.111 of the Government Code. However, sections 552.117 and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness.³ Therefore, we will address the applicability of these sections to the submitted information.

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, except as provided by section 552.024(a-1). *See* Gov't Code §§ 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, "A school district may not require

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number." *Id.* § 552.024(a-1). Thus, the district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. 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). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *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 or official 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 or official who did not timely request under section 552.024 the information be kept confidential. Therefore, if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, if the individuals whose information is at issue did not timely request confidentiality under section 552.024, the district may not withhold the marked information 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* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the district must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. The district must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The district must release the remaining 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bw

Ref: ID# 613385

Enc. Submitted documents

c: Requestor
(w/o enclosures)

JUN 11 2019

CAUSE NO. D-1-GN-16-002610

At 9:12 a.m.
Velva L. Price, District Clerk

HOUSTON INDEPENDENT
SCHOOL DISTRICT,
Plaintiff,

§
§
§
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§
§
§

IN THE DISTRICT COURT OF

v.

53rd JUDICIAL DISTRICT

KEN PAXTON, ATTORNEY
GENERAL OF TEXAS,
Defendant.

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This is an open records lawsuit brought under the Texas Public Information Act (PIA), Texas Government Code chapter 552. All matters in controversy between Plaintiff Houston Independent School District (the District) and Defendant Ken Paxton, Attorney General of Texas (the Attorney General) have been resolved, and the Parties agree to the entry and filing of an 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 to the requestor's last known address on March 20, 2018⁹, providing reasonable notice of this setting and 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 may withhold the requested information 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 neither informed the Attorney General of an intention to intervene, nor has a plea in intervention been filed.

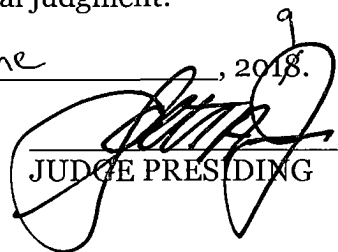


After considering the agreement of the Parties and the law, the Court is of the opinion that entry of this Agreed Final Judgment is appropriate, disposing of all claims between the Parties in this suit.

THE COURT THEREFORE FINDS AND ORDERS THAT:

1. The District and the Attorney General have agreed that, in accordance with the PIA and under the facts presented, the information at issue in this suit is excepted from disclosure under Texas Government Code section 552.107(1) (hereinafter, the Excepted Information);
2. The District may withhold the Excepted Information described in Paragraph 1;
3. The District must release any remaining requested information not found to be excepted from disclosure under Attorney General Letter Ruling OR2016-12874, to the extent it has not already done so;
4. All court cost and attorney fees are taxed against the parties incurring the same;
5. All relief not expressly granted is denied; and
6. This Agreed Final Judgment finally disposes of all claims between the District and the Attorney General in this cause and is a final judgment.

Signed this 11th day of June, 2018.



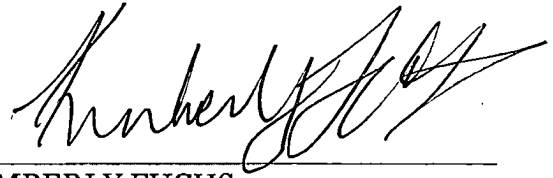
JUDGE PRESIDING

AGREED:



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COUNSEL FOR DEFENDANT

A

CAUSE NO. D-1-GN-16-002610

HOUSTON INDEPENDENT	§	IN THE DISTRICT COURT OF
SCHOOL DISTRICT,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	53 rd JUDICIAL DISTRICT
	§	
KEN PAXTON, ATTORNEY	§	
GENERAL OF TEXAS,	§	
<i>Defendant.</i>	§	TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Plaintiff Houston Independent School District (the District) and Defendant Ken Paxton, Attorney General of Texas (the Attorney General). This Agreement is made on the terms set forth below.

BACKGROUND

The District received six written requests for information pursuant to the Texas Public Information Act (PIA). The requests sought email correspondence between several named individuals. Upon receiving the requests, the District sought an open records ruling from the Attorney General pursuant to Government Code section 552.301. The Attorney General issued Open Records Letter Ruling OR2016-12874 to the District, concluding in part relevant to this lawsuit that portions of the requested information could not be withheld pursuant to Government Code section 552.107 because Plaintiff failed to submit to the Attorney General copies of the written requests for information as required by Government Code section 552.301(e)(1)(B). The District disputed the Attorney General's determination and filed suit as authorized by Government Code section 552.324.

Government Code section 552.325(c) allows the Attorney General to enter into a settlement under which portions of the requested information (the "Information at

Issue”) may be withheld pursuant to an express exception to required disclosure under the PIA. The Parties wish to resolve this matter without further litigation.

TERMS

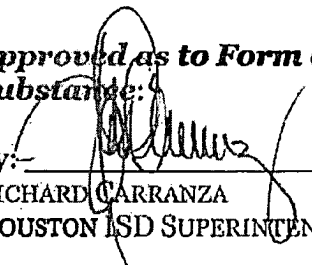
For good and sufficient consideration, the receipt of which is acknowledged, the parties to this settlement agreement (“Agreement”) agree and stipulate that:

1. The Information at Issue consists of correspondence protected by attorney-client privilege and accordingly is excepted from disclosure under section 552.107(1) of the Government Code.
2. The District may withhold the Information at Issue.
3. The District will release any requested information that does not comprise the Information at Issue and was not found to be excepted from disclosure by the Letter Ruling, to the extent it has not already done so.
4. The District and the Attorney General 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, with at least 21 days’ prior notice to the requestor. The Agreement will be attached to the Agreed Final Judgment as “Exhibit A.”
5. Pursuant to Government Code section 552.325(c), the Attorney General will notify the requestor of this Agreement and of her right to intervene to contest the Agreement and the Court’s entry of any agreed final judgment in the case.
6. 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.
7. Each party to the Agreement will bear its own costs, including attorneys’ fees relating to this litigation.
8. 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.

9. The District warrants that its undersigned representative is duly authorized to execute the Agreement on its behalf and that its representative has read the Agreement and fully understands it to be a compromise and settlement and release of all claims that the District has against the Attorney General arising out of the matters described herein.
10. The Attorney General warrants that his undersigned representative is duly authorized to execute the Agreement on behalf of the Attorney General 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 arising out of the matters described herein.
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.

HOUSTON INDEPENDENT SCHOOL DISTRICT

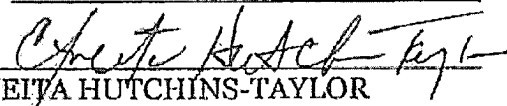
Approved as to Form and Substance:

By: 
 RICHARD CARRANZA
 HOUSTON ISD SUPERINTENDENT

Approved as to Form Only

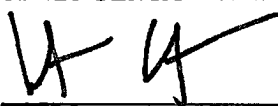
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Date: 12-15-17

By: 
 ELNEITA HUTCHINS-TAYLOR
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Date: 12-14-2017

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Date: 4-10-18