



**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 16, 2016

Mr. John P. Beauchamp  
General Counsel  
Texas Commission on Law Enforcement  
6330 East Highway 290, Suite 200  
Austin, Texas 78723-1035

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

OR2016-13752

Dear Mr. Beauchamp:

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# 614540.

The Texas Commission on Law Enforcement ("the commission") received a request for (1) a specified file for a named individual, (2) all records submitted to the commission by the Weslaco Police Department following the arrest of the named individual on a specified date, and (3) all records submitted to the commission by the Texas Department of Public Safety after the arrest of the named individual on a different specified date. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.103 of the Government Code provides, in part, the following:

---

<sup>1</sup>We note although you raise sections 552.104–.107; 552.109–.153 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim that these exceptions apply to the submitted information. *See* Gov't Code §§ 552.301, .302.

<sup>2</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 that those records contain substantially different types of information than that submitted to this office.

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See* Open Records Decision No. 551 at 4 (1990).

In order to demonstrate that litigation is reasonably anticipated, the governmental body must provide this office "concrete evidence showing that the claim that litigation might ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). In the context of anticipated litigation in which the governmental body is the prospective plaintiff, the concrete evidence must at least reflect that litigation is "realistically contemplated." *See* Open Records Decision No. 518 at 5 (1989); *see also* Attorney General Opinion MW-575 (1982) (finding that investigatory file may be withheld from disclosure if governmental body attorney determines that it should be withheld pursuant to section 552.103 and that litigation is "reasonably likely to result"). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* ORD 452 at 4.

You contend the submitted information relates to anticipated litigation by the commission. Although you indicate the commission may initiate "future criminal or administrative actions," the commission provided no explanation of any potential action or that such action constitutes litigation. Upon review, we find the commission has failed to demonstrate it reasonably anticipated litigation when it received the request for information. Therefore, the

commission may not withhold the submitted information under section 552.103(a) of the Government Code.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a governmental body has custody of information relating to a pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You state the submitted information relates to “an active ongoing criminal investigation conducted by another law enforcement agency.” You do not inform us this other law enforcement agency objects to disclosure of the information because its release would interfere with an ongoing criminal investigation. Thus, section 552.108(a)(1) is inapplicable to the submitted information. Therefore, the commission may not withhold any of the information at issue under section 552.108(a)(1) 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. Section 552.101 encompasses information confidential under section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert some of the submitted information is subject to chapter 261 of the Family Code. Upon review, however, we find you have failed to demonstrate any of the submitted information is a report of child abuse or neglect, or was used or developed in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). Therefore, we conclude section 261.201 is not applicable to the submitted information, and it may not be withheld on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen’s date of birth is private, the Third Court of Appeals looked to the supreme court’s rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees’ dates of birth are private under section 552.102 of the Government Code because the employees’ privacy interest substantially outweighed the negligible public interest in disclosure.<sup>3</sup> *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens’ dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. Therefore, the commission must withhold the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See Gov’t Code* § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular 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

---

<sup>3</sup>Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Gov’t Code* § 552.102(a).

applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Upon review, we find the commission must withhold the cellular telephone numbers we have marked under section 552.117(a)(2) of the Government Code; however, the commission may only withhold the marked cellular telephone numbers if the cellular telephone service is not paid for by a governmental body.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12 Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). Some of the submitted information pertains to an individual whose information may be subject to section 552.1175. Thus, to the extent the information we have marked pertains to an individual who is a currently-licensed peace officer, and the individual elects to restrict access to this information in accordance with section 552.1175(b), the commission must withhold the information we have marked under section 552.1175 of the Government Code. If the individual whose information we have marked is not subject to section 552.1175(a) or no election is made, the commission may not withhold this information under section 552.1175 of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by this state or another state or country. Gov't Code § 552.130(a)(1), (2). Accordingly, the commission must withhold the motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code.

In summary, the commission must withhold the date of birth we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The commission must withhold the cellular telephone numbers we have marked under section 552.117(a)(2) of the Government Code if the cellular telephone service is not paid for by a governmental body. The commission must withhold the information we marked under section 552.1175 of the Government Code to the extent the information pertains to an individual who is a currently-licensed peace officer who elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code. The commission must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The commission 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](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, reading "Ashley Crutchfield".

Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/dls

Ref: ID# 614540

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

MAY 16 2018

At 1:28 P.M. *JNR*  
Velva L. Price, District Clerk

Cause No. D-1-GN-16-003188

|                         |   |                          |
|-------------------------|---|--------------------------|
| TEXAS COMMISSION ON LAW | § | IN THE DISTRICT COURT OF |
| ENFORCEMENT,            | § |                          |
| <i>Plaintiff,</i>       | § |                          |
|                         | § |                          |
| v.                      | § | TRAVIS COUNTY, TEXAS     |
|                         | § |                          |
| KEN PAXTON, ATTORNEY    | § |                          |
| GENERAL OF TEXAS,       | § |                          |
| <i>Defendant.</i>       | § | 250th JUDICIAL DISTRICT  |

**AGREED FINAL JUDGMENT**

This cause is an action under the Public Information Act (PIA), Texas Government Code chapter 552, in which Plaintiff the Texas Commission on Law Enforcement (TCOLE) sought to withhold certain requested information from public disclosure. All matters in controversy between TCOLE and Defendant Ken Paxton, Attorney General of Texas (Attorney General), arising out of this lawsuit are resolved by a Settlement Agreement, a copy of which is attached as Exhibit "A," 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. 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 requestor, Dave Hendricks, on April 19, 2018, providing reasonable notice of this setting. The requestor was informed of the parties' agreement that TCOLE must withhold the information at issue. The requestor was also informed of his right to intervene in

*that a final judgment would be presented at uncontested docket on May 9*

the suit to contest this Agreed Final Judgment. 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.


IT IS THEREFORE ORDERED AND DECLARED that:

1. TCOLE must withhold from the information at issue the highlighted entries as marked on the documents submitted to the Attorney General under the May 8, 2017 Agreed Protective Order pursuant to Texas Government Code section 552.117(a)(2).
2. TCOLE must release or withhold all other information responsive to the request for information in compliance with Letter Ruling OR2016-13752.
3. All relief not expressly granted is denied; and
4. This Order disposes of all claims between the parties and is a final judgment.

Signed this the 16<sup>th</sup> day of May 2018.

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

AGREED:



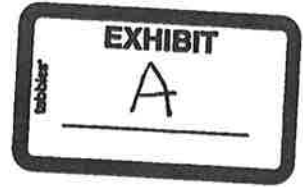
LYNN E. SAARINEN  
Assistant Attorney General  
State Bar No. 17498900  
Financial Litigation and Charitable  
Trusts Division  
P.O. Box 12548  
Austin, Texas 78711-2548  
Telephone: (512) 936-1659  
Facsimile: (512) 477-2348  
Lynn.Saarinen@oag.texas.gov

ATTORNEY FOR PLAINTIFF  
TEXAS COMMISSION ON LAW  
ENFORCEMENT



ROSALIND L. HUNT  
State Bar No. 24067108  
Assistant Attorney General  
Administrative Law Division  
Office of the Attorney General of Texas  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Telephone: (512) 475-4166  
Facsimile: (512) 457-4677  
Rosalind.Hunt@oag.texas.gov

ATTORNEY FOR DEFENDANT  
ATTORNEY GENERAL OF TEXAS



Cause No. D-1-GN-16-003188

|   |   |                          |
|---|---|--------------------------|
| TEXAS COMMISSION ON LAW ENFORCEMENT,<br><i>Plaintiff,</i>   | § | IN THE DISTRICT COURT OF |
|   | § |                          |
|   | § |                          |
| v.  | § | TRAVIS COUNTY, TEXAS     |
|   | § |                          |
| KEN PAXTON, ATTORNEY GENERAL OF TEXAS,<br><i>Defendant.</i> | § |                          |
|   | § |                          |
|   | § | 250th JUDICIAL DISTRICT  |

**SETTLEMENT AGREEMENT**

This Settlement Agreement (Agreement) is made by and between Plaintiff Texas Commission on Law Enforcement (TCOLE) and Defendant Ken Paxton, Attorney General of Texas (Attorney General).

**I. BACKGROUND**

This is a lawsuit under the Public Information Act (PIA), Texas Government Code chapter 552, by which TCOLE sought declaratory relief from an open records ruling of the Attorney General. The ruling required TCOLE to release information it claimed was excepted from disclosure. See Tex. Att’y Gen. OR2016-13752.

During the pendency of the lawsuit, TCOLE provided the information at issue to the Attorney General under a protective order and established portions of the information were confidential pursuant to section 552.117(a)(2) of the Texas Government Code. The Attorney General agrees that the requested information is confidential.

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 to the following terms.

Settlement Agreement  
Cause No. D-1-GN-16-003188 (Hendricks ORR)

## II. TERMS

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

1. TCOLE must withhold from the information at issue the highlighted entries as marked on the documents submitted to the Attorney General under the May 8, 2017 Agreed Protective Order pursuant to Texas Government Code section 552.117(a)(2).

2. TCOLE must release or withhold all other information responsive to the request for information in compliance with Letter Ruling OR2016-13752.

3. The Attorney General agrees to notify the requestor, as required by Texas Government Code section 552.325(c), of the proposed settlement and of his right to intervene to contest TCOLE's right to withhold the information. If the requestor intervenes to contest TCOLE's right to withhold the information at issue, the terms of a final judgment entered in this lawsuit after a requestor intervenes shall prevail over the terms of this Agreement.

4. TCOLE 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.

5. Each party to this Agreement will bear their own costs, including attorney fees relating to this litigation.

6. The terms of this 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 this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all Settlement Agreement

parties to this Agreement.

7. TCOLE warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that TCOLE has against the Attorney General arising out of the matters described in this Agreement.


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

9. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.


AGREED:

Date: 4/18/2018

Date: 04/18/2018



JOHN P. BEAUCHAMP  
General Counsel  
Texas Commission on Law Enforcement  
6330 East Highway, 290, Suite 200  
Austin, Texas 78723  
Telephone: (512) 936-7746  
Facsimile: (512) 936-7714  
John.Beauchamp@tcole.texas.gov



ROSALIND L. HUNT  
State Bar No. 24067108  
Assistant Attorney General  
Administrative Law Division  
Office of the Attorney General of Texas  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Telephone: (512) 475-4166  
Facsimile: (512) 457-4677  
Rosalind.Hunt@oag.texas.gov

ATTORNEY FOR DEFENDANT  
ATTORNEY GENERAL OF TEXAS