



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

October 28, 2016

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

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

OR2016-24079

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# 632188.

The Texas Commission on Law Enforcement (the "commission") received a request for records pertaining to two named individuals. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the responsive information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-20915 (2016). In that ruling, we determined the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, we conclude the commission must continue to rely on Open Records Letter No. 2016-20915 (2016) as a previous determination and withhold the identical information in accordance with that information. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

Next, we note the submitted information is not responsive to the request for information because it does not pertain to the named individuals. This ruling does not address the public availability of any information that is not responsive to the request, and the commission is not required to release this information in response to this request.

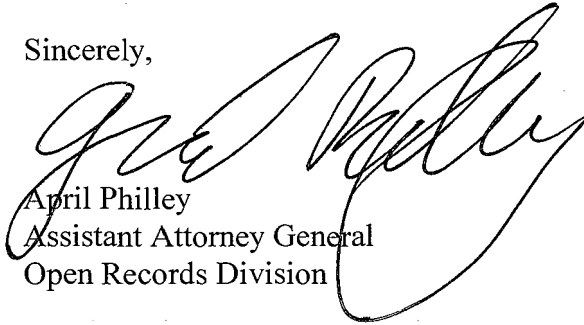
Next, we must address the commission's obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records 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. Gov't Code § 552.301(e). You state the commission received the request on July 28, 2016. As of the date of this letter, you have not submitted a copy or representative samples of the information requested. Consequently, we find the commission failed to comply with the requirements of section 552.301(e) in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. *Id.* § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.*; *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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because the commission failed to comply with the requirements of the Act, the commission has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision No. 665 at 2 n.5 (2000) (untimely request for decision results in waiver of discretionary exceptions). Although the commission raises mandatory exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the requested information released pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not 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, 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,



April Philley
Assistant Attorney General
Open Records Division

AP/akg

Ref: ID# 632188

Enc. Submitted documents

c: Requestor
(w/o enclosures)

MAY 02 2018

At 8:43 A.M.
Velva L. Price, District Clerk

Cause No. D-1-GN-16-005818

TEXAS COMMISSION ON LAW
ENFORCEMENT,
Plaintiff,

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY, TEXAS

KEN PAXTON, ATTORNEY
GENERAL OF TEXAS,
Defendant.

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, Jennifer Emily, on April 6, 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 her right to intervene in



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 the information at issue, specifically the F-5 reports Bates-stamped TCOLE 000001 through 00002, from disclosure pursuant to Tex. Occ. Code § 1701.454. TCOLE must release or withhold all other information responsive to the request for information in compliance with Letter Ruling OR2016-24079.

2. All court costs and attorney fees are taxed against the parties incurring the same;

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 2 day of May, 2018.



PRESIDING JUDGE

AGREED:



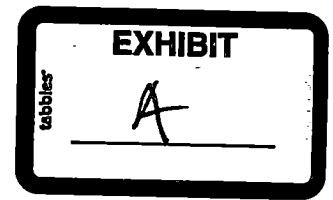
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ENFORCEMENT



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ATTORNEY FOR DEFENDANT
ATTORNEY GENERAL OF TEXAS



Cause No. D-1-GN-16-005818

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

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 subject to section 1701.454 of the Texas Occupations Code to the requestor because TCOLE failed to submit the requested information to the Attorney General for review. *See* Tex. Att’y Gen. OR2016-24079. As a consequence, the Attorney General had no choice but to rule the requested information was subject to disclosure pursuant to section 552.302 of the Texas Government Code.

During the pendency of the lawsuit, TCOLE provided the information at issue to the Attorney General under a protective order and established the information was confidential pursuant to section 1701.454 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.

II. TERMS

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

1. TCOLE must withhold the information at issue, specifically the F-5 reports Bates-stamped TCOLE 000001 through 00002, from disclosure pursuant to Tex. Occ. Code § 1701.454. TCOLE must release or withhold all other information responsive to the request for information in compliance with Letter Ruling OR2016-24079.

2. The Attorney General agrees to notify the requestor, as required by Texas Government Code section 552.325(c), of the proposed settlement and of her 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.

3. 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.

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

5. 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 parties to this Agreement.

6. 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.

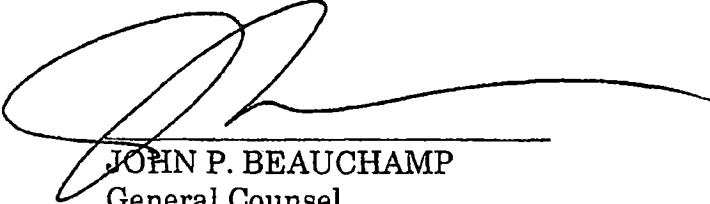
7. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General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

8. 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.

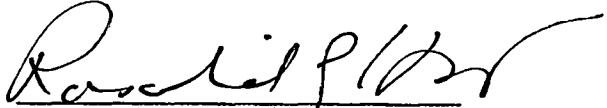
AGREED:

Date: 4/4/2018

Date: 4/6/2018



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