



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

November 18, 2016

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

Mr. Jeff Rambin
Counsel for East Texas Council of Governments
Capshaw DeRieux, LLP
114 East Commerce Avenue
Gladewater, Texas 75647

OR2016-25734

Dear Mr. Rambin:

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# 634831.

The East Texas Council of Governments (the "council"), which you represent, received multiple requests from the same requestor for information relating to the requestor and a specified facility. The council states it has released some information. The council claims the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, 552.117, 552.1175, 552.136, and 552.137 of the Government Code and privileged under Texas Rule of Civil Procedure 192.5 and Texas Rule of Evidence 503. We have considered the council's arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we note some of the submitted information may not be responsive to the instant requests. To the extent the submitted information was created after the date the council is considered to have received the instant requests, this information is not responsive to the instant requests. This ruling does not address the public availability of any information that is not responsive to the requests and the council is not required to release such information in response to these requests.

Next, we must address the council'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(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See id.* § 552.301(b). 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 claimed 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. *Id.* § 552.301(e). The council states it received the first request on July 20, 2016. The council did not submit documents or a copy of the first request until November 1, 2016. Upon review, we find the council failed to comply with section 552.301 of the Government Code with respect to each request.

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 council claims section 552.103 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *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 552.103 of the Government Code. Further, although the council also raises section 552.101 of the Government Code in conjunction with various laws, regulations, and publications,¹ sections 552.107 and 552.111 of the

¹The council does not provide arguments to withhold the submitted information under section 552.101 of the Government Code in conjunction with the following laws, regulations, and publications: the federal Privacy Act of 1974, section 552a of title 5 of the United States Code; the federal Child Abuse Prevention and Treatment Act, chapter 67 of title 42 of the United States Code; the federal Social Security Act, section 601 of title 42 of the United States Code; sections 205.50 and 1355.30 of title 45 of the Code of Federal Regulations; section 261.201 of the Family Code; section 40.005 of the Human Resources Code; sections 700.201 through section 700.209, sections 702.301 through section 702.317, section 809.71, and section 823.24 of title 40 of the Texas Administrative Code; and a publication by the Texas Department of Family and Protective Services.

Government Code, Texas Rule of Civil Procedure 192.5, and Texas Rule of Evidence 503 for the submitted information, the council has provided no arguments explaining these provisions are applicable to the information at issue. *See* Gov't Code §§ 552.301, .302. Accordingly, the council may not withhold any of the submitted information on those bases. However, section 552.101 of the Government Code, which protects information made confidential under law, and sections 552.117, 552.1175, 552.136, and 552.137 of the Government Code, which make information confidential, can provide compelling reasons to withhold information. Accordingly, we will consider the council's arguments under these exceptions. Further, we note portions of the submitted responsive information are confidential under section 552.130 of the Government Code.² Section 552.130 makes information confidential and constitutes a compelling reason to overcome the presumption of openness. Therefore, we will address the applicability of section 552.130 to the submitted information.

We note the council seeks to withhold a portion of the submitted information based on the assertion that the information at issue promises individuals that information obtained from them will be kept confidential. However, we note information is not confidential under the Act simply because the party that submits the information anticipates or requests it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act by agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information did not satisfy requirements of statutory predecessor to Gov't Code § 552.110). Consequently, unless the information falls within an exception to disclosure, the council must release it, notwithstanding any expectations or agreement specifying otherwise.

We understand the council to claim the submitted responsive information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 823.24(b)(3) of title 40 of the Texas Administrative Code. Section 552.101 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 made confidential by other statutes. Section 302.002(d) of the Labor Code authorizes the Texas Workforce Commission (the “commission”) to adopt rules to administer the commission's workforce development division. Lab. Code § 302.002(d) (commission shall adopt rules in accordance with Chapter 2001, Government Code, as necessary for proper administration of the commission's workforce development division). We understand under the authority of section 302.002(d), the commission promulgated section 823.24(b)(3)

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

of title 40 of the Texas Administrative Code. Section 823.24 details procedures for certain hearings before the commission. Section 823.24(b)(3) provides “[c]onfidentiality of information contained in the hearing record shall be maintained in accordance with federal and state law.” 40 T.A.C. § 823.24(b)(3). For information to be confidential under section 552.101, a statute must explicitly require confidentiality. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public), 465 at 4-5 (1987); *see also Indus. Found.*, 540 S.W.2d at 677 (governmental agency may not bring information within scope of statutory predecessor to section 552.101 by promulgation of rule; to imply such authority merely from general rule-making powers would be to allow agency to circumvent very purpose of the Act). Confidentiality cannot be implied from the structure of a statute or rule. *See* ORD 465 at 4-5. We note section 823.24(b)(3) provides the commission must maintain confidential information contained in such a hearing record in accordance with applicable federal and state law and does not, itself, make information confidential for purposes of the Act. Accordingly, the council may not withhold the information at issue under section 552.101 in conjunction with section 823.24(b)(3) of title 40 of the Texas Administrative Code.

Section 552.101 of the Government Code encompasses 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.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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.³ *Texas 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. We note the requestor has a right of access to her private information that is otherwise protected under common-law privacy

³Section 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).

under section 552.023 of the Government Code. See Gov't Code § 552.023(a); Open Records Decision No. 481 at (4) (1987) (privacy theories not implicated when individuals request information concerning themselves).

Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the council must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. We note some of the remaining information pertains to individuals who have been de-identified and whose privacy interests are, thus, protected. Therefore, the council may not withhold any of the information pertaining to the de-identified individuals under section 552.101 of the Government Code in conjunction with common-law privacy. Accordingly, with the exception of the requestor's date of birth and the dates of birth of the de-identified individuals, the council must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, the council failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the council may not withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently, and (2) an individual's interest in avoiding disclosure of personal matters. ORD 455 at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the council must withhold the information we indicated under section 552.101 in conjunction with constitutional privacy. However, we find no portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the council may not withhold any of the remaining information under section 552.101 on the basis of constitutional privacy.

Section 552.101 of the Government Code also encompasses the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this standard, the court noted "deference must be afforded" law enforcement experts

regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119. The council failed to demonstrate release of the remaining information would create a substantial threat of physical harm for council employees. Accordingly, the council may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

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). Upon review, however, we find none of the remaining consists of the home address, home telephone number, emergency contact information, social security number, or family member information of a current or former employee of the council, and none of the remaining information may be withheld under section 552.117(a)(1) of the Government Code.

You claim some of the remaining information is protected under section 552.1175 of the Government Code. This section excepts from public disclosure the home addresses and telephone numbers, emergency contact information, dates of birth, social security numbers, 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. *See* Gov’t Code § 552.1175(a)-(b). However, section 552.1175 applies only to certain categories of individuals. *Id.* § 552.1175(a)(1)-(13). Upon review, we find none of the remaining consists of the home address, home telephone number, emergency contact information, date of birth, social security number, or family member information of an individual who falls within the specified categories of governmental body employees listed in section 552.1175(a). Accordingly, none of the remaining information may be withheld under section 552.1175 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. We note section 552.130 protects personal privacy. Accordingly, the requestor has a right of access to her motor vehicle record information under section 552.023 of the Government Code and it may not be withheld under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Accordingly, the council must withhold the motor vehicle record information not belonging to the requestor in the remaining information under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t

Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the council failed to demonstrate any of the remaining information consists of access device numbers for purposes of section 552.136. Accordingly, the council may not withhold any of the remaining information under section 552.136 of the Government Code.

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). We note the information at issue includes the requestor’s e-mail address, to which the requestor has a right of access pursuant to section 552.137(b). *See id.* § 552.137(b). Accordingly, the council may not withhold the requestor’s e-mail address from her under section 552.137. However, with the exception of the requestor’s e-mail address, the council must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies.

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

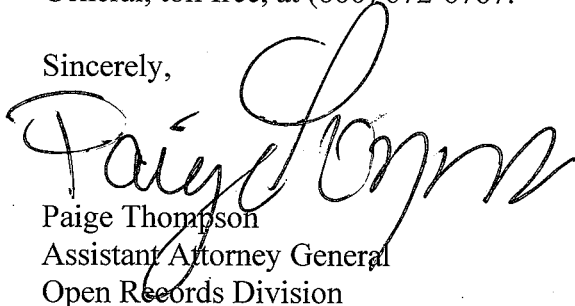
In summary, to the extent the submitted information was created after the date the council is considered to have received the instant requests, this information is not responsive to the instant requests. The council must withhold the information we marked and, with the exception of the requestor’s date of birth and the dates of birth of the de-identified individuals, all public citizens’ dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. The council must withhold the information we indicated under section 552.101 of the Government Code in conjunction with constitutional privacy. The council must withhold the motor vehicle record information not belonging to the requestor in the remaining information under section 552.130 of the Government Code. With the exception of the requestor’s e-mail address, the council must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies. The remaining

responsive information must be released; however, any information protected by copyright may only be released in accordance with copyright law.⁴

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 634831

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note the information being released includes information to which the requestor has a right of access, including the requestor's social security number. *See* Gov't Code §§ 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles), .137(b); ORD 481 at 4. However, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b). Accordingly, section 552.147(b) authorized the council to withhold the social security numbers not belonging to the requestor without requesting a decision from this office under the Act.

MAR 28 2018 SH

At 8:47 A.M.
Velva L. Price, District Clerk

Cause No. D-1-GN-16-005814

EAST TEXAS COUNCIL OF
GOVERNMENTS,
Plaintiff,

v.

KEN PAXTON, ATTORNEY
GENERAL OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201st JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

This is a cause of action under the Public Information Act (PIA), Texas Government Code chapter 552, in which Plaintiff East Texas Council of Governments (ETCOG) sought to withhold certain information from public disclosure. All matters in controversy between Plaintiff ETCOG and Defendant Ken Paxton, Attorney General of Texas (Attorney General), arising out of this lawsuit have been resolved by a Settlement Agreement, a copy of which is attached hereto 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. 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/or electronic mail to the last known addresses of the requestors, Melanie Law and Glenn Evans, providing reasonable notice of this setting. The requestors were informed of the parties' agreement that ETCOG must withhold certain information

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from disclosure and of the requestors' right to intervene in the suit to contest ETCOG's right to withhold the information. The requestors have not filed motions to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate.

IT IS THEREFORE ADJUDGED, 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), ETCOG must withhold from both requestors the attorney-client privileged communications in accordance with the Attorney General's markings in the representative sample exhibits C, D, and E produced to the Attorney General under the May 18, 2017 Agreed Protective Order.

2. ETCOG must release or withhold all other information responsive to the requests in compliance with Letter Rulings OR2016-25734 and OR2016-25755, and if appropriate, ETCOG may charge for providing copies of the information at issue to the requestors in accordance with Texas Government Code section 552.261 and the regulations promulgated by the Attorney General. Furthermore, Letter Rulings OR2016-25734 and OR2016-25755 will not be considered "previous determinations" by the Open Records Division of the Office of the Attorney General under Tex. Gov't Code § 552.301(a), (f); and, if the precise information is requested again, ETCOG may ask for a decision from the Attorney General under Tex. Gov't Code § 552.301(g).

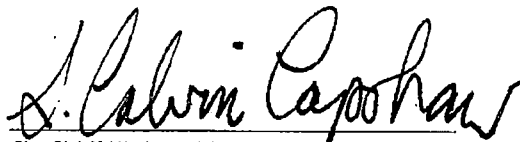
3. All court cost and attorney fees are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims and all parties and is a final judgment.

Signed this 28th day of March, 2018.

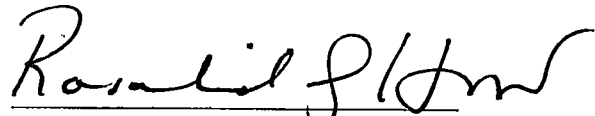

JUDGE PRESIDING

AGREED:



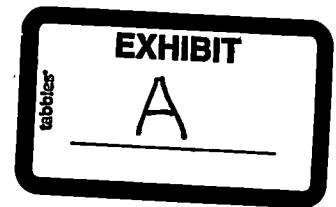
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ATTORNEY FOR DEFENDANT
ATTORNEY GENERAL OF TEXAS



Cause No. D-1-GN-16-005814

EAST TEXAS COUNCIL OF GOVERNMENTS,
Plaintiff,

v.

KEN PAXTON, ATTORNEY GENERAL OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201st JUDICIAL DISTRICT

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Plaintiff East Texas Council of Governments (ETCOG) and Defendant Ken Paxton, Attorney General of Texas (Attorney General), on the terms set forth below.

I. BACKGROUND

On July 20, 2016, ETCOG received a request for public information from a child care contractor, Ms. Melanie Law d/b/a Punkin' Doodles, for a broad range of documents concerning the termination of Punkin' Doodles' child care contract. On July 21, 2016, Glenn Evans of the Longview News Journal also requested public information concerning the operation and records of Melanie Law d/b/a Punkin' Doodles, including correspondence between ETCOG personnel and attorneys for ETCOG.

ETCOG sought clarification and narrowing of the requests from both requestors, which delayed ETCOG's request for open records rulings from the Attorney General. On September 12, 2016, ETCOG sought Attorney General decisions on both requests under the Public Information Act (PIA), Texas

Government Code section 552.301, on whether portions of information could be withheld.

The Attorney General issued two Letter Rulings in response. The first Letter Ruling, OR2016-25734, addressed Ms. Law's request for information and concluded ETCOG did not timely request an Attorney General decision in accordance with PIA section 552.301's mandatory deadlines. *See* Tex. Att'y Gen. OR2016-25734 at 2-3. As a consequence, the requested information is presumed subject to public disclosure unless a compelling reason exists to withhold the requested information. *See* Tex. Gov't Code § 552.302. ETCOG was required to withhold from disclosure certain confidential information under PIA sections 552.130, 552.137, and 552.101 in conjunction with common law privacy and constitutional privacy, but must release privileged information subject to PIA sections 552.103 and 552.107. *See* Tex. Att'y Gen. OR2016-25734 at 3, 7.

With regards to Mr. Evans's request for the same information, the Attorney General issued the second Letter Ruling, OR2016-25755, which ruled ETCOG complied with PIA section 552.301, and may withhold the attorney-client privilege communications to the extent it was not previously released.

ETCOG disputed the rulings and filed this suit to challenge both rulings. During the pendency of the lawsuit, the Texas Supreme Court issued the decision, *Paxton v City of Dallas*, 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 Dallas*, 509 S.W.3d 247, 267–68 (Tex. 2017). Consistent with the *Paxton* decision, the parties agreed that the attorney-client privileged communications must be withheld from the requestors pursuant to Texas Government Code section 552.107 and *Paxton v. City of Dallas*.

All matters in controversy between the parties arising out of this lawsuit have been resolved. 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. Tex. Gov't Code § 552.325(c). The parties agree to the following terms.

II. TERMS

For good and sufficient consideration, including the compromise and settlement of a good faith dispute concerning the application of the Public Information Act to the requests at issue, the receipt of which is acknowledged, the parties agree and stipulate that:

1. Pursuant to Texas Government Code section 552.107 and *Paxton v. City of Dallas*, 509 S.W.3d 247 (Tex. 2017), ETCOG must withhold from both requestors the attorney-client privileged communications in accordance with the Attorney General's markings in the representative sample exhibits C, D, and E produced to the Attorney General under the May 18, 2017 Agreed Protective Order.

2. ETCOG must release or withhold all other information responsive to the requests in compliance with Letter Rulings OR2016-25734 and OR2016-25755; and if appropriate, ETCOG may charge for providing copies of the information at

issue to the requestors in accordance with Texas Government Code section 552.261 and the regulations promulgated by the Attorney General. Furthermore, Letter Rulings OR2016-25734 and OR2016-25755 will not be considered "previous determinations" by the Open Records Division of the Office of the Attorney General under Tex. Gov't Code § 552.301(a), (f); and, if the precise information is requested again, ETCOG may ask for a decision from the Attorney General under Tex. Gov't Code § 552.301(g).

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

4. The parties, ETCOG 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. Before entry of the agreed final judgment, the Attorney General will notify the requestor, as required by Texas Government Code section 552.325(c), of the proposed settlement and of his right to intervene. If the requestor intervenes, then this Agreement shall become null and void and the agreed final judgment shall not be entered.

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 parties to this Agreement.

7. ETCOG 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 ETCOG has against the Attorney General arising out of the matters described in this Agreement.

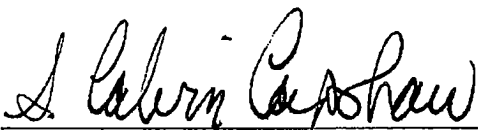
8. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General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

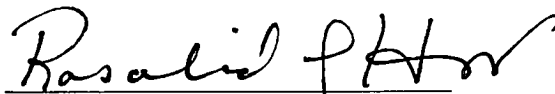
Date: 2/26/2018

Date: 02/26/2018



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