



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

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**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 4, 2017

Ms. ML Calcote and Ms. Molly Cost  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

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

OR2017-17632

Dear Ms. Calcote and Ms. Cost:

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# 667025 (PIR Nos. 17-3094, 17-3126, 17-3155, 17-3183, 17-3338, 17-3340, and 17-4006).

The Texas Department of Public Safety (the "department") received seven requests for information pertaining to applications for certain types of licenses.<sup>1</sup> You state you have released some information. Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of the following third parties: Alamo CBD ("Alamo"); Arete Holistics LLC ("Arete"); Auxilium Farms; Big Star Bioceticals, LLC ("Big Star"); Cannliv, LLC;

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<sup>1</sup>The department sought and received clarification of three of the requests for information. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Additionally, you state the department sent two of the requestors cost estimates of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimates required the requestors to provide deposits for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the department received the required deposits on May 17, 2017, and on May 25, 2017, respectively. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

CannOrganics of Texas (“CannOrganics”); Consortium Texas, LLC d/b/a Knox Medical, LLC (“Knox”); Columbia Care Texas, LLC (“CCTX”); Compassionate Cultivation, LLC (“CC”); GB Sciences Texas, LLC (“GB Sciences”); Green Well Ventures, LLC (“Green Well”); GTGC Capital Partners, Inc.; J and L Plants, Inc. (“J and L”); Lone Star Compassion Center, LLC; Lionnac, LLC (“Lionnac”); Medicus, LLC (“Medicus”); Mercury Copper Farms, LLC (“Mercury”); Paradigm Pharm, LLC; Surterra Texas, LLC (“Surterra”); Texas Cannabis; Texas Compassionate Care (“Compassionate Care”); Texas Has Compassion, LP; Texas Re-Leaf, Ltd. (“Re-Leaf”); Texas Wellness Investment Group, Inc.; Ucci Farms, LP; and VMG Cultivators, LLC (“VMG”). Accordingly, you state, and provide documentation showing, you notified these third parties of the requests and their right to submit arguments to this office. *See* Gov’t Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Alamo, Arete, Big Star, CannOrganics, CCTX, CC, GB Sciences, Green Well, J and L, Knox, Lionnac, Medicus, Mercury, Surterra, Texas Cannabis, Compassionate Care, Re-Leaf, and VMG. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the remaining third parties explaining why the submitted information should not be released. Thus, we have no basis to conclude the remaining third parties have protected proprietary interests in the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the department may not withhold any of the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Next, we note some of the third parties argue against the release of information that was not submitted by the department. This ruling does not address information that was not submitted by the department and is limited to the information the department has submitted for our review. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Section 552.104(a) of the Government Code excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s

information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841.

CCTX, CC, Cannorganics, GB Sciences, Green Well, Surterra, Texas Cannabis, and VMG state they have competitors. CCTX states release of its information “would give advantage to a competitor or bidder.” CC states some of its information would cause it harm if released. GB Sciences states “releasing the narrative descriptions in [its] application would give an advantage to [its] competitors[.]” Cannorganics states release of its information may allow competitors “to gain a competitive advantage.” Green Well states “disclosure [of its information] would provide great advantage to [its] competitors.” Surterra states release of the information it marked would “provide great advantage to [its] competitors.” Texas Cannabis states that “[i]f its competitors were able to access [its] information they would certainly gain an advantage and be better equipped to undercut Texas Cannabis in the marketplace.” VMG states release of the information it has indicated may offer “significant and potentially even decisive” advantage to its competitors. After review of the information at issue and consideration of the arguments, we find CCTX, CC, Cannorganics, GB Sciences, Green Well, Surterra, Texas Cannabis, and VMG have established their information at issue would give an advantage to a competitor or bidder. Thus, we conclude the department may withhold the following information under section 552.104(a) of the Government Code: the entirety of the submitted information pertaining to CCTX, Cannorganics, and Green Well; the information Surterra marked; and the information CC, GB Sciences, Texas Cannabis, and VMG indicated.<sup>2</sup>

Alamo, Arete, Big Star, J and L, Knox, Lionnac, Medicus, Mercury, Compassionate Care, Re-Leaf, and VMG argue portions of their information are excepted from disclosure under section 552.110 of the Government Code. Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See Gov’t Code* § 552.110. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* ORD 552. Section 757 provides that a trade secret is:

any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the

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<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

business . . . . A trade secret is a process or device for continuous use in the operation of the business . . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.<sup>3</sup> RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. *See* Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6.

In advancing its arguments, we understand one of the third parties to rely, in part, on the test pertaining to the applicability of the section 552(b)(4) exemption under the federal Freedom of Information Act to third-party information held by a federal agency, as announced in *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). The *National Parks* test provides that commercial or financial information is confidential if disclosure of information is likely to impair a governmental body’s ability to obtain

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<sup>3</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company’s] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

necessary information in the future. *National Parks*, 498 F.2d at 765. Although this office once applied the *National Parks* test under the statutory predecessor to section 552.110, that standard was overturned by the Third Court of Appeals when it held *National Parks* was not a judicial decision within the meaning of former section 552.110. *See Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. denied). Section 552.110(b) now expressly states the standard to be applied and requires a specific factual demonstration that the release of the information in question would cause the business enterprise that submitted the information substantial competitive harm. *See* ORD 661 at 5-6 (discussing enactment of section 552.110(b) by Seventy-sixth Legislature). The ability of a governmental body to continue to obtain information from private parties is not a relevant consideration under section 552.110(b). *Id.* Therefore, we will consider only the interest of the third parties in the information at issue.

Alamo, Arete, Big Star, J and L, Knox, Lionnac, Medicus, Mercury, Compassionate Care, Re-Leaf, and VMG seek to withhold some of their information under section 552.110(a). Upon review, we find Arete, Knox, Medicus, and Mercury have established a *prima facie* case that portions of their information constitute trade secrets. Accordingly, the department must withhold the information we have marked under section 552.110(a) of the Government Code.<sup>4</sup>

Alamo, Big Star, J and L, Knox, Lionnac, Medicus, Mercury, Compassionate Care, Re-Leaf, and VMG contend some of their information is commercial or financial information, the release of which would cause substantial competitive harm to the companies. Upon review, we find Big Star, Lionnac, Knox, Medicus, and Mercury have demonstrated some of the information at issue constitutes financial information, the release of which would cause the companies substantial competitive injury. Accordingly, the department must withhold the information we marked under section 552.110(b) of the Government Code.<sup>5</sup>

However, upon review, we find Alamo, Arete, Big Star, J and L, Knox, Medicus, Mercury, Compassionate Care, Re-Leaf, and VMG have failed to establish a *prima facie* case their remaining information at issue meets the definition of a trade secret. We further find these third parties have not demonstrated the necessary factors to establish a trade secret claim for their remaining information at issue. *See* ORDs 402, 319 at 2 (information relating to organization, personnel, market studies, professional references, qualifications, experience, and pricing not excepted under section 552.110). Therefore, the department may not withhold the remaining information at issue under section 552.110(a). Further, upon review, we find Alamo, Big Star, J and L, Knox, Medicus, Mercury, Compassionate Care, Re-Leaf,

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<sup>4</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

<sup>5</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

and VMG have not established their remaining information constitutes commercial or financial information, the disclosure of which would cause the companies substantial competitive harm. *See* Gov't Code § 552.110(b); ORD 319 at 3. Therefore, the department may not withhold the remaining information at issue under section 552.110(b).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 6103(a) of title 26 of the United States Code. The remaining information contains corporate tax return information. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of . . . income, payments, . . . tax withheld, deficiencies, over assessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or . . . the determination of the existence, or possible existence, of liability . . . for any tax, penalty, . . . or offense[.]" *See* 26 U.S.C. § 6103(b)(2)(A). Upon review, we find the department must withhold the tax information we marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.<sup>6</sup>

Section 552.101 of the Government Code also encompasses information protected by other statutes. As part of the Texas Homeland Security Act, sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. CC asserts some of its remaining information is made confidential by section 418.177 of the Government Code, which provides,

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

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<sup>6</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Gov't Code § 418.177. The fact that information may relate to security concerns does not make the information *per se* confidential under the Texas Homeland Security Act. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, an entity asserting one of the confidentiality provisions of the Texas Homeland Security Act must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

CC raises section 418.177 for portions of its remaining information. Upon review of CC's arguments and the information at issue, we find CC has failed to demonstrate the remaining information at issue is confidential under section 418.177. Consequently, the department may not withhold the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 560.003 of the Government Code. Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see also id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Therefore, the department must withhold the submitted fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center (the "NCIC") or by the Texas Crime Information Center is confidential under federal and state law. CHRI means "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov't Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the department maintains, except the department may disseminate this information as provided in chapter 411, subchapter E-1 or F of the Government Code. *See* Gov't Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Similarly, any CHRI obtained from the department or any other criminal justice agency must be withheld under section 552.101 of the Government

Code in conjunction with Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Accordingly, the department must withhold the CHRI within the remaining information, a representative sample of which we have marked, under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Additionally, the court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). However, we note the addresses and telephone numbers of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision No. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy). Further, we note common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989) (corporation has no right to privacy (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950))), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990).

Upon review, we find the types of information we have marked and indicated satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. We note the requestor for request PIR# 17-3094 (the "seventh requestor") has a right of access to his own date of birth pursuant to section 552.023 of the Government Code and it may not be withheld

from him under section 552.101 in conjunction with common-law privacy. *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); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, the department must withhold all living public citizens' dates of birth and the types of information we marked and indicated under section 552.101 in conjunction with common-law privacy; however, the department may not withhold the seventh requestor's date of birth from him under section 552.101 on that basis. We find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern, and the department may not withhold the remaining information under section 552.101 on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy, which 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. Open Records Decision No. 455 at 4 (1987). 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 none of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the remaining information is not confidential under constitutional privacy, and the department may not withhold it under section 552.101 on that ground.

Section 552.102(a) of the Government Code 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). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Thus, under *Texas Comptroller*, section 552.102(a) is applicable to the date of birth of an employee of a governmental body in a record maintained by his or her employer in an employment context. In this instance, the remaining information at issue relates to private entities. Therefore, the department may not withhold the remaining information at issue under section 552.102(a).

Re-Leaf raises section 552.108 of the Government Code. However, section 552.108 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. Open

Records Decision Nos. 522 at 4 (1989) (discretionary exceptions in general), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Because the department does not seek to withhold any information under section 552.108, none of the remaining information may be withheld on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). We note because section 552.130 is designed to protect the privacy of individuals, the seventh requestor has a right of access to his own motor vehicle record information pursuant to section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. Therefore, the department must withhold the motor vehicle record information in the remaining information, a representative sample of which we have marked and indicated, under section 552.130; however, the department may not withhold the seventh requestor's motor vehicle record information from him under section 552.130.

The remaining documents also include information that is subject to section 552.136 of the Government Code.<sup>7</sup> Section 552.136 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"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 (2009). We note the seventh requestor has a right of access to the insurance policy number of Compassionate Care and it may not be withheld from him under section 552.136. *See* Gov't Code § 552.023(b); ORD 481 at 4. Therefore, the department must withhold all bank account, routing, and insurance policy numbers within the remaining information under section 552.136; however, Compassionate Care's insurance policy number may not be withheld from the seventh requestor under section 552.136.

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 section (c). *See* Gov't Code § 552.137(a)-(c). We note the seventh requestor has a right of access to his own e-mail address under section 552.137(b) and it may not be withheld from him under section 552.137. *Id.* § 552.137(b). We also note section 552.137(c)(5) states section 552.137(a) does not apply to an e-mail address "provided to a governmental body for the purpose of providing public comment or receiving notices related to an application for a license as defined by

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<sup>7</sup>The 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).

Section 2001.003(2) of [the Government Code], or receiving order or decisions from a governmental body.” *Id.* § 552.137(c)(5). Because we are unable to discern whether the e-mail addresses at issue fall within the scope of section 552.137(c), we rule conditionally. To the extent the e-mail addresses in the remaining information are not excluded by section 552.137(c) of the Government Code, the department must withhold them under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release; however, the department may not withhold the seventh requestor’s e-mail address from him under section 552.137. To the extent the e-mail addresses at issue are excluded by section 552.137(c), the e-mail addresses may not be withheld under section 552.137 of the Government Code.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Id.* § 552.147(a). Upon review, we find the department may withhold the social security numbers of living individuals in the remaining information under section 552.147 of the Government Code.

We note some of the remaining information appears to be subject to copyright law. 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, the department may withhold under section 552.104(a) of the Government Code (1) the entirety of the submitted information pertaining to CCTX, Cannorganics, and Green Well; (2) the information Surterra marked; and (3) the information CC, GB Sciences, Texas Cannabis, and VMG indicated. The department must withhold: (1) the information we have marked under sections 552.110(a) and 552.110(b) of the Government Code; (2) the tax information we marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code; (3) the submitted fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (4) the CHRI within the remaining information, a representative sample of which we have marked, under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code; (5) all living public citizens’ dates of birth and the types of information we marked and indicated under section 552.101 of the Government Code in conjunction with common-law privacy; however, the department may not withhold the seventh requestor’s date of birth from him under section 552.101 on that basis; (6) the motor vehicle record information in the remaining information, a representative sample of which we have marked and indicated, under section 552.130 of the Government Code; however, the department may not withhold the seventh requestor’s motor vehicle record information from him under section 552.130; (7) all bank account, routing,

and insurance policy numbers within the remaining information under section 552.136 of the Government Code; however, Compassionate Care's insurance policy number may not be withheld from the seventh requestor under section 552.136; and (8) the e-mail addresses in the remaining information under section 552.137 of the Government Code to the extent they are not excluded by section 552.137(c), unless the individuals to whom the e-mail addresses belong affirmatively consent to their release; however, the department may not withhold the seventh requestor's e-mail address from him under section 552.137. The department may withhold the social security numbers of living individuals in the remaining information under section 552.147 of the Government Code. The department must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.

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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/bw

Ref: ID# 667025

Enc. Submitted documents

c: 6 Requestors  
(w/o enclosures)

35 Third Parties  
(w/o enclosures)

APR 30 2019

At 8:55 A.M.  
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-17-004910

TEXAS COMPASSIONATE CARE, LLC,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	53rd JUDICIAL DISTRICT
	§	
KEN PAXTON, ATTORNEY GENERAL	§	
OF THE STATE OF TEXAS, and TEXAS	§	
DEPARTMENT OF PUBLIC SAFETY,	§	
<i>Defendants.</i>	§	TRAVIS COUNTY, TEXAS

**AGREED FINAL JUDGMENT**

This is a lawsuit under the Texas Public Information Act (PIA), Government Code chapter 552. Plaintiff Texas Compassionate Care, LLC (Compassionate Care), seeks declaratory relief from Open Records Letter Ruling OR2017-17632 (the Letter Ruling), issued by Defendant Ken Paxton, Attorney General of Texas (the Attorney General) to Defendant Texas Department of Public Safety (DPS). Compassionate Care seeks the required withholding of certain records requested from and held by DPS, notwithstanding the Letter Ruling's conclusion that such records were subject to required public disclosure. Compassionate Care, the Attorney General, and DPS (collectively, the Parties) have settled all matters in controversy arising out of this lawsuit and agree to the entry of this Agreed Final Judgment. *See Ex. A (Settlement Agreement).*

Pursuant to Texas Government Code § 552.325(d) the Court shall allow a PIA 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 Texas Government Code § 552.325(c), the Attorney General sent notice by certified mail to each requestor's last known address on March 29, 2019, providing reasonable notice of this setting and of a requestor's right to intervene in the suit. *See Ex. B (proof of*



mailing). The requestors were informed of the proposed Settlement Agreement under which DPS must withhold those portions of the requested information concerning Compassionate Care as agreed upon by the Parties. The requestors were also informed of their right to intervene in the suit to contest the withholding of the information. Neither requestor has informed the Parties of an intention to intervene in the lawsuit, 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.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. The Parties agree that, in accordance with the PIA and under the facts presented, the information at issue in this lawsuit, if released, would give an advantage to a competitor or bidder, and therefore is excepted from required public disclosure pursuant to Texas Government Code § 552.104 (the "Excepted Information");
2. DPS must withhold the Excepted Information;
3. All court costs and attorney fees are taxed against the Party incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment fully and finally disposes of all claims between all Parties in this cause, and is a final judgment.

SIGNED this 30<sup>TH</sup> day of APRIL, 2019.

JUDGE PRESIDING

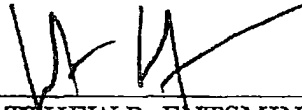
**KARIN CRUMP**

AGREED:



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Lisa@ttb.legal

ATTORNEY FOR PLAINTIFF  
TEXAS COMPASSIONATE CARE, LLC



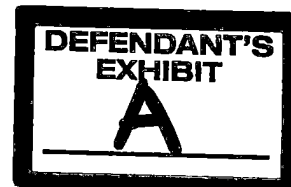
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ATTORNEY FOR DEFENDANT KEN PAXTON,  
ATTORNEY GENERAL OF TEXAS



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ATTORNEY FOR DEFENDANT TEXAS  
DEPARTMENT OF PUBLIC SAFETY



CAUSE NO. D-1-GN-17-004910

TEXAS COMPASSIONATE CARE, LLC,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	53rd JUDICIAL DISTRICT
KEN PAXTON, ATTORNEY GENERAL	§	
OF THE STATE OF TEXAS, and TEXAS	§	
DEPARTMENT OF PUBLIC SAFETY,	§	
<i>Defendants.</i>	§	TRAVIS COUNTY, TEXAS

**SETTLEMENT AGREEMENT**

This Settlement Agreement (the "Agreement") is made by and between Plaintiff Texas Compassionate Care, LLC (Compassionate Care), and Defendants, Ken Paxton, Attorney General of the State of Texas (the Attorney General), and the Texas Department of Public Safety (DPS) (collectively, "the Parties"). The Agreement is made on the terms set forth below.

**BACKGROUND**

DPS received four requests under the Texas Public Information Act (the PIA) for certain applications submitted to DPS concerning the Compassionate Use Act. As is relevant to this lawsuit, DPS identified as responsive to the requests an application submitted by Compassionate Care (the "Responsive Documents").

Pursuant to Government Code § 552.305, DPS declined to release the Responsive Documents and sought an open records ruling from the Attorney General, in response to which the Attorney General issued Open Records Letter Ruling OR2017-17632. Compassionate Care submitted comments to the Attorney General asserting the Responsive Documents are subject to an express exception to the PIA's disclosure requirement; however, notwithstanding Compassionate Care's argument the ruling concluded, in part relevant to this lawsuit, that the Responsive Documents were not

excepted from required public disclosure and must be released to the public. Compassionate Care disputed the Attorney General's conclusion and filed this lawsuit to preserve its rights under the PIA.

Texas Government Code § 552.325(c) allows the Parties to enter into a settlement under which the Responsive Documents may be withheld. 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 Agreement agree and stipulate that:

1. The Attorney General and Compassionate Care agree the Responsive Documents, if released, would give an advantage to a competitor or bidder, and accordingly are excepted from required public disclosure under Texas Government Code § 552.104 (hereinafter, the "Excepted Information");

2. DPS must withhold the Excepted Information described in Paragraph 1 of this Agreement from public disclosure. DPS agrees that it will not rely on Letter Ruling OR2017-17632 as a prior determination as it pertains to Compassionate Care's information;

3. Pursuant to Texas Government Code § 552.325(c), the Attorney General agrees to notify the requestors of the proposed settlement and of their right to intervene in this suit, should they contest the withholding of the Excepted Information;

4. The Attorney General, Compassionate Care, and DPS 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, after at least 21 days' prior notice to the requestors;

5. Should a Requestor intervene in the suit, a final judgment entered in the suit will prevail over this Agreement, to the extent of any conflict;

6. Each party to this Agreement will bear its own costs, including attorneys' fees relating to this litigation;

7. 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;


8. Compassionate Care 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 the parties have against each other arising out of the matters described in this Agreement;

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

10. DPS warrants that his undersigned representative is duly authorized to execute this Agreement on his behalf and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims the parties have against each other arising out of the matters described in this Agreement; and,

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

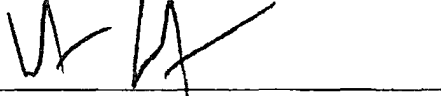
TEXAS COMPASSIONATE CARE, LLC

By: 

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Date: 3-26-19


KEN PAXTON, ATTORNEY GENERAL OF TEXAS

By: 

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matthew.entsminger@oag.texas.gov

Date: 3-29-19

TEXAS DEPARTMENT OF PUBLIC SAFETY

By: 

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Date: 3-27-19