



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

September 1, 2017

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

Ms. Susan Henricks
Executive Director
Texas Board of Law Examiners
P.O. Box 13486
Austin, Texas 78711-3486

OR2017-20028

Dear Ms. Henricks:

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# 673899.

The Texas Board of Law Examiners (the "board") received a request for names, addresses, and telephone numbers of all individuals who graded the requestor's bar exam, the portions of the exam that each individual graded, and any written notes and comments by the individuals. The board indicates it will withhold information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.¹ The board states it has released some of the requested information. The board claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the exceptions the board claims and reviewed the submitted information. Additionally, the board provides documentation showing it has notified the individuals of the right to submit comments to this office why some of the

¹Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c).

submitted information should not be released.² See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

In Open Records Letter No. 92-267 (1992), this office addressed whether bar exam scores held by the board are subject to the Act. In that ruling, we noted section 82.003 of the Government Code generally provides the board is subject to the Act. However, we also noted section 82.003(b) provides, “[e]xamination questions that may be used in the future and examinations other than the one taken by the person requesting it are exempt from disclosure.” *Id.* § 82.003(b). In an order issued on July 7, 1987, which the board has provided to this office, the Texas Supreme Court clarified section 82.003 by exempting from disclosure under the Act “[g]rades and examination results of any person.”³ *Order of the Supreme Court of Texas* (Tex. July 7, 1987). Therefore, in Open Records Letter No. 92-267 (1992), this office held any information coming under section 82.003(b) or the exemptions listed in the Supreme Court’s July 7, 1987, order was not subject to the Act and the board need not seek a ruling from this office regarding whether it must release such information.

The board notes the order of the Supreme Court at parts 1(c) and (d) exempts from disclosure “[e]xaminations or parts thereof including . . . [m]odel answers, scoring keys or other aids,” as well as “[e]xaminee’s answers.” The board states, and the documents reflect, a portion of the submitted information consists of the requestor’s examination responses and scores and includes graders’ notations. The board asserts “[a]ny written notes or comments on [the requestor’s] performance as well as the scores assigned to different components of the answers are recorded on his examination answers. . . . The grader’s scoring notations are indivisible and meaningless if excerpted from the answers.” Accordingly, we understand the board to argue the responsive scoring notations fall within the exemptions listed in parts 1(c) and (d) of the order of the Supreme Court. Upon review of the board’s assertions and the information at issue, we agree the responsive graders’ notations contained within the requestor’s examination answers are subject to the July 7, 1987, order of the Supreme Court. Therefore, the information at issue is not subject to the Act, and need not be released to the requestor.

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 the common-law physical safety exception. The Texas Supreme Court has recognized a separate 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

²As of the date of this letter, this office has not received comments from any third party explaining why any of the submitted information should not be released.

³An applicant may request his or her own grades under the supreme court’s order, but the grades may be withheld pending the resolution of an investigation into the applicant’s moral character and fitness.

exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this new 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 board argues the remaining information is excepted under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The board states “[t]he requestor . . . has a history of antagonistic behavior directed toward the members and staff of the [board.]” The board further states after a recent administration of the state bar examination, the requestor confronted a board member and was reported as “‘yelling’ and speaking ‘in a threatening way.’” Thus, the board contends disclosure of the identities of the lawyers who graded the requestor’s bar examination answers would create a substantial threat of physical harm.” Upon review, we conclude the board has made only vague assertions of risk of harm that could result from the disclosure of any of the information at issue. Thus, the board has not demonstrated release of any of the information at issue would subject anyone to a specific risk of harm. Accordingly, the board may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

The board also seeks to withhold the remaining information under section 552.152 of the Government Code. Section 552.152 provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

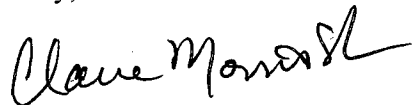
Gov’t Code § 552.152. Upon review, we find the board has not demonstrated the release of any of the remaining information would subject an employee of the board to a substantial threat of physical harm. Thus, the board may not withhold any of the remaining information under section 552.152 of the Government Code.

In summary, the requestor’s examination information and graders’ notations are not subject to the Act and need not be released to the requestor. The board must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/bw

Ref: ID# 673899

Enc. Submitted documents

c: Requestor
(w/o enclosures)

15 Third Parties
(w/o enclosures)

APR 17 2018

At 1:34 PM
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-17-005574

TEXAS BOARD OF LAW EXAMINERS,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
HONORABLE KEN PAXTON,	§	
ATTORNEY GENERAL OF THE STATE	§	
OF TEXAS,	§	
<i>Defendant.</i>	§	201st JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

This is an open records lawsuit brought under the Texas Public Information Act (PIA), Texas Government Code chapter 552. All matters in controversy between Plaintiff Texas Board of Law Examiners (the Board) and Defendant Ken Paxton, Attorney General of Texas (the Attorney General) have been resolved, and the Parties agree to the entry and filing of an agreed final judgment. *See Exhibit A (Settlement Agreement).*

Pursuant to Tex. Gov't Code § 552.325(d), the Court shall allow the requestor a reasonable period of time to intervene after the Attorney General attempts to notify the requestor of the proposed settlement. The Attorney General represents to the Court and the Court hereby takes judicial notice that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent notice by certified mail the requestor's last known address on March 9, 2018, providing reasonable notice of this setting and of the requestor's right to intervene in the suit. *See Ex. B (proof of mailing).* The requestor was informed of the proposed Settlement Agreement under which the Board must withhold the information at issue in this lawsuit, as agreed upon by the Parties. The requestor was also informed of the right to intervene in this lawsuit to contest the withholding of the information. The requestor has not informed the Attorney General of an intention to intervene and no plea in intervention has been filed.

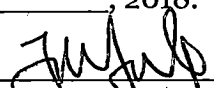


After considering the agreement of the Parties and the law, the Court is of the opinion that entry of this Agreed Final Judgment is appropriate, disposing of all claims between the Parties in this suit.

THE COURT THEREFORE FINDS AND ORDERS THAT:

1. The Board and the Attorney General have agreed that, in accordance with the PIA and under the facts presented, the information at issue in this suit is confidential and excepted from disclosure pursuant to Texas Government Code section 82.003 (the Excepted Information);
2. The Board must withhold the Excepted Information described in Paragraph 1;
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 between the Board and the Attorney General in this cause and is a final judgment.

Signed this 17th day of April, 2018.



JUDGE PRESIDING
TIM SULAK

AGREED:



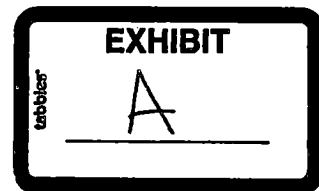
CYNTHIA A. MORALES
State Bar No. 14417420
Assistant Attorney General
Financial Litigation and Charitable
Trusts Division
ATTORNEY GENERAL OF TEXAS
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4470
Facsimile: (512) 477-2348
cynthia.morales@oag.texas.gov

ATTORNEY FOR TEXAS BOARD OF LAW
EXAMINERS



MATTHEW R. ENTSMINGER
State Bar No. 24059723
Chief, Open Records Litigation
Administrative Law Division
ATTORNEY GENERAL OF TEXAS
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4151
Facsimile: (512) 457-4686
matthew.entsminger@oag.texas.gov

ATTORNEY FOR KEN PAXTON, ATTORNEY
GENERAL OF TEXAS



CAUSE NO. D-1-GN-17-005574

TEXAS BOARD OF LAW EXAMINERS,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
HONORABLE KEN PAXTON,	§	
ATTORNEY GENERAL OF THE STATE	§	
OF TEXAS,	§	
<i>Defendant.</i>	§	201st JUDICIAL DISTRICT

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Plaintiff Texas Board of Law Examiners (the Board) and Defendant Ken Paxton, Attorney General of the State of Texas (the Attorney General). This Agreement is made on the terms set forth below.

BACKGROUND

Pursuant to the Texas Public Information Act (PIA), Texas Government Code chapter 552, the Board received a written request for records relating to the requestor's bar exam results, including the contact information of all individuals who graded the requestor's exam. Upon receiving the request, the Board sought an opinion from the Attorney General's Open Records Division pursuant to Texas Government Code section 552.301. On September 1, 2017, the Attorney General issued Open Records Letter Ruling OR2017-20028 (the Letter Ruling) in response to the Board's request. The ruling concluded, in part relevant to this lawsuit, that the exam graders' identifying information was not excepted from required disclosure and must be released to the requestor (the "information at issue").

On September 8, 2017, the Texas Supreme Court issued *Order Approving Amendments to the Rules Governing Admission to the Bar of Texas*, Misc. Docket No.

17-9112. Pursuant to amended Rule 7, the name and contact information of any bar exam grader who is not a Board member are confidential under Texas Government Code section 82.003 and may not be disclosed by the Board. Believing it was now prohibited from releasing the information at issue, the Board filed this lawsuit as permitted by Texas Government Code section 552.324, seeking declaratory relief from compliance with the Attorney General's Letter Ruling.

Texas Government Code section 552.325(c) allows the Attorney General to enter into a settlement under which the information at issue 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 settlement agreement ("Agreement") agree and stipulate that:

1. The information at issue consists of the names and contact information of bar exam graders who are not Board members.
2. The information at issue is confidential and excepted from disclosure pursuant to Tex. Gov't Code § 82.003 and amended Rule 7 of the Rules Governing Admission to the Bar of Texas.
3. The Board must withhold the information at issue from the requestor.
4. The Board and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the Court for approval, on the uncontested docket, with at least 21 days' prior notice to the requestor. This Agreement will be attached to the agreed final judgment as "Exhibit A."
5. Pursuant to Tex. Gov't Code Section 552.325(c), the Attorney General will notify the requestor of this Agreement and of his right to intervene to contest this Agreement and the Court's entry of any agreed final judgment in the case.
6. If the requestor intervenes to contest this Agreement, a final judgment entered in this lawsuit will prevail over the Agreement, to the extent of any conflict.
7. Each party to this Agreement will bear its own costs, including attorneys' fees relating to this litigation.

8. 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 the Agreement.
9. The Board 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 the Board has against the Attorney General arising out of the matters described herein.
10. The Attorney General warrants that his undersigned representative is duly authorized to execute 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 the Board arising out of the matters described in this Agreement.
11. 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.

TEXAS BOARD OF LAW EXAMINERS

By: 

SUSAN HENRICKS
State Bar No. 09475200
Executive Director
TEXAS BOARD OF LAW EXAMINERS
205 W 14th Street, #500
Austin, Texas 78701
Telephone: (512) 463-1621
Facsimile: (512) 463-5300

Date: March 5, 2018

KEN PAXTON, ATTORNEY GENERAL OF
TEXAS

By: 

MATTHEW R. ENTSMINGER
State Bar No. 24059723
Chief, Open Records Litigation
Administrative Law Division
ATTORNEY GENERAL OF TEXAS
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4151
Facsimile: (512) 457-4686
matthew.entsminger@oag.texas.gov

Date: March 5, 2018

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Dallas, Texas 75235

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- Attach this card to the back of the mailpiece, or on the front if space permits.

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JAMAR OSBORNE
5105 Vandelia Street, Apt. E
Dallas, Texas 75235

2. Article Number
(Transfer from service label)

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If YES, enter delivery address below: No

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[TBLE]: [Requestor Letter]

Matthew R. Entsminger, Open Records Litigation
Office of Attorney General, ALD - 018
P O BOX 12548 CAPITOL STATION
AUSTIN TX 78711-2548