



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

December 20, 2017

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

Mr. Kyle Miller
County Attorney
County of Hemphill
400 Main Street, Room 103
Canadian, Texas 79014

OR2017-28860

Dear Mr. Miller:

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# 688787.

The Hemphill County Sheriff's Department (the "department") received a request for ten items of information related to a specified investigation and the operations of the department. You state the department will release information responsive to items five and six of the request. You state you do not have information responsive to item two of the request.¹ You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, the department states it sought clarification of item four of the request for information. *See id.* § 552.222(b) (governmental body may communicate with requestor for

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

purpose of clarifying or narrowing request for information). The department states it has not received a response to its request for clarification. Accordingly, the department has no obligation at this time to release any information that might be responsive to this portion of the request. However, if the department receives clarification and wishes to withhold any of the information encompassed by the clarified request, the department must request another decision from this office at that time. *See id.* §§ 552.301, .302; *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad 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).

Next, we must address the department's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See Gov't Code* § 552.301. 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. *See id.* § 552.301(e). The department received the request on October 6, 2017. Thus, the department's fifteen-business-day deadline was October 27, 2017. However, as of the date of this letter, the department has not submitted for our review a copy or representative sample of the information requested in items one, three, seven, eight, nine, or ten. Consequently, we find the department failed to comply with section 552.301 of the Government Code for the information at issue.

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, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Although the department raises exceptions to disclosure, because you have not submitted the requested information in items one, three, seven, eight, nine, or ten for our review, we have no basis for finding any of the information at issue excepted from disclosure. Thus, we have no choice but to order the requested information in items one, three, seven, eight, nine, or ten released pursuant to section 552.302. If you believe the information may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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

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

Sincerely,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/som

Ref: ID# 688787

Enc. Submitted documents

c: Requestor
(w/o enclosures)

DEC 18 2018

At 8:42 P.M.
Velva L. Price, District Clerk

Cause No. D-1-GN-18-000097

HEMPHILL COUNTY, TEXAS,
Plaintiff,

v.

KEN PAXTON, IN HIS OFFICIAL
CAPACITY AS ATTORNEY
GENERAL OF TEXAS,
Defendant.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261st JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Texas Government Code chapter 552, in which Plaintiff Hemphill County, Texas (County) sought to withhold certain requested information from public disclosure. All matters in controversy between the County and Defendant Ken Paxton, Attorney General of Texas (Attorney General), arising out of this lawsuit are resolved by the Settlement Agreement attached as Exhibit "A," and the parties agree to the entry and filing of this Agreed Final Judgment.

Texas Government Code § 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 Texas Government Code § 552.325(c), the Attorney General sent a letter by certified mail and electronic mail to the requestor, Rosanna L. Abreo, on November 16, 2018, providing reasonable notice that the Agreed Final Judgment would be presented to the court on or after this day. The



requestor was informed of the parties' agreement that the County may withhold the information at issue. The requestor was also informed of her right to intervene in the suit to contest this Agreed Final Judgment. The requestor has not filed a motion to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of this Agreed Final Judgment is appropriate.

IT IS THEREFORE ORDERED AND DECLARED that:

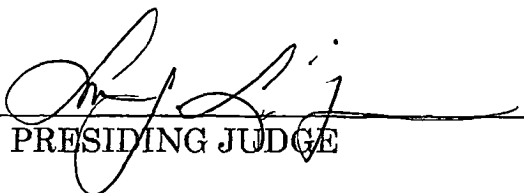
1. The County may withhold the information at issue, which consists of videos, photographs, phone records, digital voice recordings, radio calls, emails, and documents relating to Texas Attorney General Criminal Justice Division's Thomas Brown investigation, under Texas Government Code § 552.108(a)(1).

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

3. All relief not expressly granted is denied; and

4. This Order disposes of all claims between the parties and is a final judgment.

Signed this the 18th day of December, 2018.

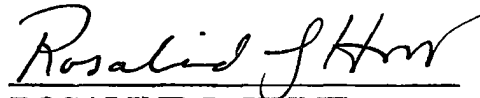

PRESIDING JUDGE

AGREED:



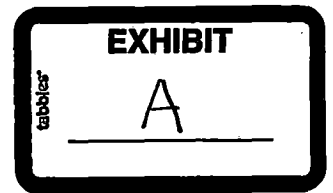
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ATTORNEY FOR DEFENDANT
ATTORNEY GENERAL OF TEXAS



Cause No. D-1-GN-18-000097

HEMPHILL COUNTY, TEXAS,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
KEN PAXTON, IN HIS OFFICIAL	§	
CAPACITY AS ATTORNEY	§	
GENERAL OF TEXAS,	§	
<i>Defendant.</i>	§	261st JUDICIAL DISTRICT

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Plaintiff Hemphill County, Texas (County), and Defendant Ken Paxton, In his Official Capacity as Attorney General of Texas (Attorney General).

Background

In October of 2017, the Hemphill County Sheriff's Department received written requests for information from Ms. Rosanna L. Abreo under the Public Information Act for ten items of information related to the missing person investigation of Thomas Brown. The County asked for an open records ruling from the Attorney General, but failed to meet the deadlines required by Texas Government Code § 552.301. As a result, the requested information was ruled subject to public disclosure unless there was a compelling reason to withhold the information under Texas Government Code § 552.302. The County failed to demonstrate a compelling reason to withhold the information from

disclosure and was required to release the requested information to the requestor. *See* Tex. Att'y Gen. OR2017-28860.

After the lawsuit was filed, the County demonstrated a compelling reason to withhold the requested information from disclosure under Texas Government Code § 552.108(a)(1) by showing release of the information would interfere with the Texas Attorney General Criminal Justice Division's investigation. The Attorney General agrees with the County that the requested information is excepted from disclosure under Texas Government Code § 552.108(a)(1). The parties wish to resolve this matter without further litigation. Pursuant to section 552.325(c) of the Texas Government Code, the Attorney General may enter into a settlement that allows all or part of the information at issue in this lawsuit to be withheld. The parties agree to the following terms.

Terms

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

1. The County may withhold the information at issue, which consists of videos, photographs, phone records, digital voice recordings, radio calls, emails, and documents relating to the Texas Attorney General Criminal Justice Division's Thomas Brown investigation, under Texas Government Code § 552.108(a)(1).

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

3. The County and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney.

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

5. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

6. The County 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 County has against the Attorney General arising out of the matters described in this Agreement.

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

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

AGREED:

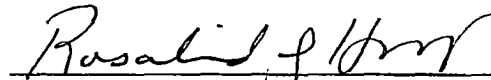
Date: 11/14/2018

Date: 11/15/2018



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