



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 6, 2020

Mr. Ronny H. Wall
Senior Associate General Counsel
The Texas Tech University System
Post Office Box 4503
Lubbock, Texas 79409-5031

OR2020-25158

Dear Mr. Wall:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. This request was originally received by the Open Records Division (“ORD”) of this office and assigned ID# 846688. Preparation of the ruling has been assigned to the Opinion Committee.

Texas Tech University (the “University”) received a request for information pertaining to a named employee of the University. You claim the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.117, 552.136, 552.136 and 552.147 of the Government Code, and 26 U.S.C. § 6103(a) and 8 U.S.C. § 1324a. We have considered the exceptions the University claims and reviewed the information you submit in Attachments C and E.

You tell us the documents in Attachment C are the exact same documents that were the subject of previous requests for information, as a result of which this office issued Open Records Letter Ruling No. 2019-27330. *See* Tex. Att’y Gen. OR2019-27330. In response to OR2019-27330, a lawsuit was filed against the University and the Office of the Attorney General. *See Doe v. Paxton*, No. D-1-GN-19-007627 (201st Dist. Ct., Travis County, Tex. Oct. 29, 2019). Accordingly, with respect to the information in Attachment C at issue in the lawsuit, we will allow the trial court to resolve the issue whether the information that is the subject of the pending litigation must be released to the public.¹

With respect to the information in Attachment E, we must first address the University’s obligations under section 552.301 of the Government Code, which prescribes the

¹As we are able to make this determination, we need not address the submitted arguments against disclosure of this information.

procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e-1) provides:

A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

TEX. GOV'T CODE § 552.301(e-1). In the written comments submitted to this office you indicate that you redacted portions of your comments regarding the University's discussion of the claimed exceptions, including information that does not disclose or contain the substance of the information requested. Consequently, we find the University failed to comply with the requirements of section 552.301(e-1).

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 information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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, 381–82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Tex. Att'y Gen. ORD-630 (1994) at 2. A compelling reason generally exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Tex. Att'y Gen. ORD-150 (1977) at 2. You claim section 552.103 excepts from disclosure Exhibit E in its entirety. Yet, section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Tex. Att'y Gen. ORD-676 (2002) at 10–11 (attorney-client privilege under section 552.107(1) may be waived), ORD-665 (2000) at 2–3 n.5 (discretionary exceptions generally), ORD-663 (1999) at 5 (waiver of discretionary exceptions). In failing to comply with section 552.301(e-1), the University has waived this exception. *See* TEX. GOV'T CODE § 552.302. Therefore, the University may not withhold the information in Attachment E under section 552.103 of the Government Code.

You also argue that section 552.107(2) of the Government Code provides a basis for withholding the remaining requested information in Attachment E. A claim under section 552.107(2) can provide a compelling reason for non-disclosure under section 552.302. Section 552.107(2) provides that “[i]nformation is excepted from [required public disclosure] if . . . a court by order has prohibited disclosure of the information.” *Id.* § 552.107(2). You submit an agreed temporary injunction, which prohibits the release of documents or information that contains a party's personal identifiable information and relates to, or identifies, the party in any regard in this lawsuit. The temporary agreed injunction applies to you and you tell us it remains in effect. Upon review, we agree a

court, by order, has prohibited disclosure of the information at issue. Accordingly, the University must withhold the submitted information in Exhibit E under section 552.107(2) of the Government Code.²

In summary, with regard to the information in Attachment C at issue in *Doe v. Paxton*, we will allow the trial court to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public. The University must withhold the submitted information in Attachment E under section 552.107(2) 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,c

Charlotte M. Harper
Assistant Attorney General
Opinion Committee

CMH/eb

Ref: ID# 846688

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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