



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.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2013

Mr. Michael Shaunessy
Counsel for Comal County
Sedgewick LLP
919 Congress Avenue, Suite 1250
Austin, Texas 78701-3656

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

OR2013-13671

Dear Mr. Shaunessy:

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# 495573.

Comal County (the "county"), which you represent, received a request for a copy of the policies and procedures for the county jail. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You generally assert the personal telephone numbers of members of the public you have marked in the submitted information are confidential under section 552.101 of the Government 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. However, you have not directed our attention to, and we are not aware of, any law under which such information is considered to be confidential for purposes of section 552.101 of the Government Code. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality); *see also* Open Records Decision Nos. 551 at 3 (1990) (disclosure

¹We note that although you did not timely raise section 552.101 of the Government Code, that section can provide a compelling reason to withhold information, and we will address your argument under section 552.101 for the submitted information. *See* Gov't Code §§ 552.301, .302.

of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Therefore, we conclude the county may not withhold any of the information at issue under section 552.101 of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the information you have marked "sets out the specific procedures utilized by the [county] jail related to jail and officer security, including the handling of inmates" and these procedures "detail the manner and methods of securely searching inmates and moving inmates." You further state release of this information would "result in inmates learning about security, safety, and detention procedures" and "allow inmates to develop ways to defeat or exploit specific procedures." Upon review, we find release of the information we have marked would interfere with law enforcement and crime prevention. Accordingly, the county may withhold the information we have marked under section 552.108(b)(1) of the Government Code. However, we find the county has failed to demonstrate how release of the remaining information at issue would interfere with law enforcement, and the county may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code. As you raise no further exceptions to disclosure, the remaining information must be released.

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 495573

Enc. Submitted documents

c: Requestor
(w/o enclosures)

SC APR 07 2016
At 4:00 P.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-13-002902

COMAL COUNTY, TEXAS,
Plaintiff,

v.

GREG ABBOTT, ATTORNEY
GENERAL OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

353rd JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This is an open records lawsuit brought under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which Plaintiff Comal County, Texas (the County), filed suit against Ken Paxton, Attorney General of Texas, challenging Attorney General Open Records Letter Ruling OR2013-13671 (2013). The parties have entered into a settlement agreement (the Settlement Agreement) by which all matters in controversy arising out of this lawsuit have been resolved, and the parties now agree to the entry and filing of this Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow the requestor of information a reasonable period of time to intervene after receiving notice of the proposed settlement in a lawsuit filed under the PIA. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent notice to requestor Ms. Vanessa Flora on March 9, 2016, providing reasonable notice of this setting. The requestor was informed of the parties' agreement that the County may withhold portions of the information at issue in this suit, as agreed upon between the parties. The requestor was also informed of her right to intervene in the suit to contest the withholding of the information. The requestor has neither informed the parties of her intention to intervene, 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 an agreed final judgment is appropriate, disposing of all claims between these parties in this suit.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. The County and the Attorney General agree that, in accordance with the PIA and under the facts presented, the portions of the information at issue described in Term 1 of the Settlement Agreement are excepted from disclosure pursuant to Tex. Gov't Code § 552.108(b)(1) (hereinafter, the Excepted Information);

2. The County may withhold the Excepted Information described in Paragraph 1 of this order, as well as those portions of the requested information found to be excepted from disclosure by Open Records Letter Ruling OR2013-13671, and must release any remaining requested information to the requestor;

3. All court costs 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 County and the Attorney General in this cause, and is a final judgment.

SIGNED this 7th day of April, 2016.



JUDGE PRESIDING

AGREED:



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ATTORNEY FOR COMAL COUNTY, TEXAS



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

CAUSE NO. D-1-GN-13-002902

COMAL COUNTY, TEXAS,
Plaintiff,

v.

GREG ABBOTT, ATTORNEY
GENERAL OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

353rd JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Plaintiff Comal County, Texas (the County), and Defendant Ken Paxton, in his official capacity as Attorney General of Texas (the Attorney General).¹ This Agreement is made on the terms set forth below.

BACKGROUND

The County received a request under the Texas Public Information Act (PIA) for information regarding the County jail's policies and procedures. The County sought an open records ruling from the Attorney General pursuant to the PIA, Texas Government Code section 552.301. The County submitted comments to the Attorney General asserting, in pertinent part, that portions of the requested information were excepted from required disclosure pursuant to section 552.108 of the Government Code.

The Open Records Division of the Office of the Attorney General issued Open Records Letter Ruling OR2013-13671 (2013) in response to the County's request (the Letter Ruling). The Attorney General determined a portion of the requested records consisted of information that, if released, would interfere with law enforcement and crime

¹ Greg Abbott was named defendant in his official capacity as Texas Attorney General. Ken Paxton became Texas Attorney General on January 5, 2015, and is now the appropriate defendant in this cause.

prevention. Accordingly, the Attorney General ruled the County may withhold that portion of the requested information under section 552.108(b)(1) of the Government Code. The Attorney General concluded, however, that the County must release the remaining requested information.

The County disputed the Letter Ruling and filed a lawsuit, styled *Comal County, Texas v. Greg Abbott, Attorney General of Texas*, Cause No. D-1-GN-13-002902, in the 353rd District Court of Travis County, Texas (this lawsuit), to preserve its rights under the PIA. In its petition, the County asserts portions of the information determined to be subject to public release under the Letter Ruling are excepted from disclosure pursuant to section 552.108(b) of the Government Code (the Information at Issue). Tex. Gov't Code § 552.325(c) allows the parties to enter into a settlement under which the information at issue in this lawsuit 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 County has demonstrated the following portions of the Information at Issue consist of information that, if released, would interfere with law enforcement and crime prevention:

(a) Page [ComalCty000003], sections I (“Objective”), and II (“Duties”);

(b) Page [ComalCty000219], sections III.B.1 and III.B.2 (two emergency telephone numbers).

2. The County may withhold the information described above in Term 1(a)–(b), and the information determined to be excepted from disclosure by Open Records

Letter Ruling OR2013-13671, pursuant to Tex. Gov't Code § 552.108(b)(1) (the Excepted Information).

3. The County must release to the requestor all of the requested information not consisting of the Excepted Information, to the extent such information has not already been released.

4. 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. 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.

5. The Attorney General agrees to notify the requestor, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of her right to intervene in this lawsuit, should she contest the terms of the Agreement and agreed final judgment.

6. Should the requestor intervene in this lawsuit, a final judgment entered in this lawsuit will prevail over this 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.

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. 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

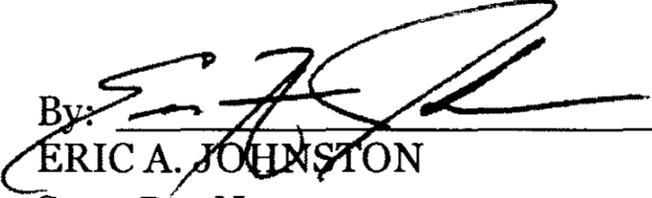
claims the parties have against each other arising out of the matters described in this Agreement.

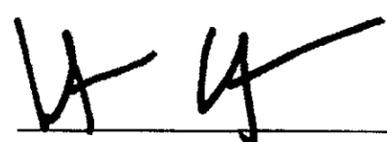
9. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims the parties have against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

10. 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.

COMAL COUNTY, TEXAS

KEN PAXTON, in his official capacity as
ATTORNEY GENERAL OF TEXAS

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Date: 3/31/2016

Date: 3/31/2016