



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

October 7, 2014

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

Mr. William Clay Harris
Office of Agency Counsel
Legal Section MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2014-17855

Dear Mr. Harris:

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# 539634 (TDI# 153219).

The Texas Department of Insurance (the "department") received a request for information pertaining to specified complaints made to the department involving two named individuals. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code and privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5. We have considered your arguments.

Initially, we note the department seeks to withdraw its request for an open records decision because the department asserts the request for information was withdrawn by operation of law due to the requestor's failure to timely respond to a cost estimate for providing the requested records. Upon review of a copy of the cost estimate, we find it does not comply with the requirements of section 552.2615(a) of the Government Code. *See Gov't Code* § 552.2615(a). Accordingly, we conclude the request for information was not withdrawn by operation of law. *See id.* § 552.2615(b).

We must address the department's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to

section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated 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. *Id.* § 552.301(e). In this instance, you state the department received the request for information on July 29, 2014. As of the date of this letter, you have not submitted for our review written comments stating the reasons why the stated exceptions apply or a copy or representative sample of the information requested. Consequently, we find the department failed to comply with section 552.301 of the Government Code.

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. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Although you claim the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code and privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, these are discretionary exceptions and privileges that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 677 at 10 (attorney work-product privilege under section 552.111 or rule 192.5 is not compelling reason to withhold information under section 552.302), 676 at 12 (claim of attorney-client privilege under section 552.107 or rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 665 at 2 n.5 (2000) (discretionary exceptions in general), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). Thus, in failing to comply with section 552.301, the department has waived its claims under sections 552.103, 552.107, and 552.111, Texas Rule of Evidence 503, and Texas Rule of Civil Procedure 192.5. Furthermore, because you have not submitted the requested information to this office for our review, we have no basis for finding it confidential under section 552.101 of the Government Code. Thus, we have no choice but to order you to release the requested information in accordance with section 552.302 of the Government Code. If you believe the information is confidential and 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,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is written in a cursive style with a large, looping initial "P".

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 539634

c: Requestor

OCT 18 2016

mk

At 8:39 AM.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-14-004634

TEXAS DEPARTMENT OF
INSURANCE,
Plaintiff,

v.

GREG ABBOTT, ATTORNEY
GENERAL OF TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201ST JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which the Texas Department of Insurance (TDI) sought to withhold certain information from public disclosure. All matters in controversy between Plaintiff, TDI, and Defendant, Greg Abbott, Attorney General of Texas (the Attorney General), arising out of this lawsuit have been resolved by settlement, a copy of which is attached hereto as Exhibit "A," and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code Section 552.324 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 Tex. Gov't Code Section 552.324, the Attorney General sent notice of the proposed settlement between the parties to the requestor, Peter N. Rogers, on October 7, 2016. The requestor was informed of the parties' agreement that TDI must withhold the information described below. The requestor was also informed of his right to intervene in the suit to contest the withholding of this information. The requestor has affirmed to the Attorney General that he does not intend to intervene in this matter.

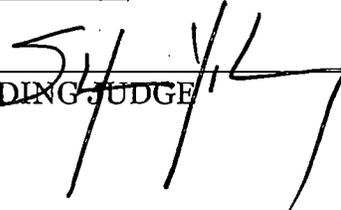


After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

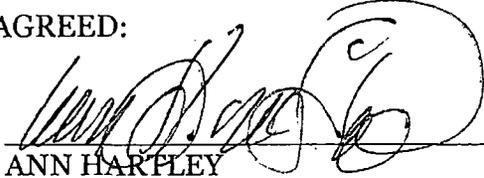
1. The information at issue, specifically the information assembled by the Office of the Medical Advisor in the TDI Division of Workers Compensation, is confidential pursuant to Texas Government Code Section 552.101 in conjunction with Texas Labor Code Section 402.092.
2. TDI must withhold from the requestor the information described in Paragraph 1 of this judgment.
3. All court costs and attorney fees are taxed against the parties incurring the same;
4. All relief requested by any party and not expressly granted herein is denied; and
5. This Agreed Final Judgment finally disposes of all claims between TDI and the Attorney General and is a final judgment.

SIGNED the 18 day of October, 2016.



PRESIDING JUDGE

AGREED:



ANN HARTLEY

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ATTORNEY FOR TEXAS DEPARTMENT
OF INSURANCE



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ATTORNEY FOR DEFENDANT



CAUSE NO. D-1-GN-14-004634

<p>TEXAS DEPARTMENT OF INSURANCE, <i>Plaintiff,</i></p> <p>v.</p> <p>GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, <i>Defendant.</i></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>IN THE DISTRICT COURT OF</p> <p>TRAVIS COUNTY, TEXAS</p> <p>201ST JUDICIAL DISTRICT</p>
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SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Plaintiff Texas Department of Insurance (TDI) and Defendant Ken Paxton, Attorney General of Texas¹ (the Attorney General). This Agreement is made on the terms set forth below.

Background

TDI received a written request for information from Peter N. Rogers under the Public Information Act (PIA). The request was for certain documents relating to a named individual, a licensed physician.

TDI asked for an open records ruling from the Attorney General, pursuant to Texas Government Code Section 552.301.

The Attorney General issued Letter Ruling OR2014-17855 (Letter Ruling) in response to TDI's request. The ruling concluded that the information at issue must be disclosed to the requestor.

TDI filed suit to challenge the Letter Ruling pursuant to Texas Government Code Section 552.324.

¹ Greg Abbott was sued in his official capacity as the Attorney General of Texas. Ken Paxton is now the Attorney General of Texas and is the proper defendant in this lawsuit.

TDI submitted information to the Attorney General arguing that Texas Government Code Section 552.101 in conjunction with Section 402.092 of the Texas Labor Code makes this information confidential. After reviewing the additional information and arguments, the Attorney General now agrees that TDI has established that Section 402.092 makes the identified information confidential and not subject to disclosure.

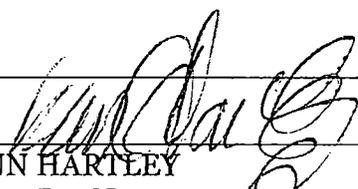
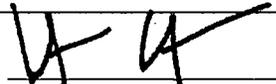
Texas Government Code Section 552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

Terms

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

1. The information at issue is confidential pursuant to Texas Government Code Section 552.101 in conjunction with Texas Labor Code Section 402.092.
2. TDI must withhold from the requestor the information described in Paragraph 1 of this Agreement.
3. TDI 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 15 days prior notice to the requestor. The Court, in entering final judgment, will attach this Settlement Agreement as Exhibit "A".
4. The Attorney General agrees that he will also notify the requestor, as required by Tex. Gov't Code Section 552.325(c), of the proposed settlement and of his right to intervene to contest TDI's right to have the information withheld.

5. If the requestor intervenes to contest the withholding, a final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.
6. Each party to this Agreement will bear its own costs, including attorney 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. TDI 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 TDI has against the Attorney General 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 that the Attorney General has against TDI 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 on which the last of the undersigned parties sign this Agreement.

 <p>ANN HARTLEY State Bar No. 09157700 Assistant Attorney General Financial Litigation, Tax, and Charitable Trusts Division P.O. Box 12548 Austin, Texas 78711-2548 Telephone: (512) 936-1313 Facsimile: (512) 477-2348 ann.hartley@texasattorneygeneral.gov</p> <p>ATTORNEY FOR TEXAS DEPARTMENT OF INSURANCE</p>	<p>10/10/16</p> <hr/> <p>DATE</p>
 <p>MATTHEW R. ENTSMINGER State Bar No. 24059723 Chief, Open Records Litigation Administrative Law Division P.O. Box 12548, Capitol Station Austin, Texas 78711-2548 Telephone: (512) 475-4195 Facsimile: (512) 320-0167 matthew.entsminger@texasattorneygeneral.gov</p> <p>ATTORNEY FOR DEFENDANT</p>	<p>9/27/16</p> <hr/> <p>DATE</p>