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

March 23, 2012

Mr. Thomas D. McClure
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

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

OR2012-04340

Dear Mr. McClure:

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# 448516 (DSHS File 19842/2012).

The Texas Department of State Health Services (the "department") received a request for any e-mails sent and received by four named individuals during a specified period and including certain keywords. You state the department will release some of the information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.111, and 552.117 of the Government Code.[1] You also inform us you have notified the Texas Medical Board (the "board") of the request and of its right to submit comments to this office explaining why some of the information should not be released. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have received comments from the

[1]Although you raise section 552.108 of the Government Code for Exhibit E, you do not provide arguments to support that exception. Accordingly, we find the department has waived its claim under section 552.108. *See* Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

board. Thus, we have considered the submitted comments and reviewed the submitted representative sample of information.[1]

Initially, we note some of the information you have submitted consists of completed "unusual incident reports." Section 552.022 of the Government Code provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless the information is made confidential under the Act or "other law" or is excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). You claim section 552.111 of the Government Code for this information. However, section 552.111 is a discretionary exception designed to protects the interests of a governmental body and may be waived. *See* Open Records Decision No. 663 at 5 (1999) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.111 does not make information confidential for purposes of section 552.022. Accordingly, the department may not withhold the completed reports we have marked under section 552.111 of the Government Code. However, the department also claims section 552.101 of the Government Code for this information. Section 552.101 does make information confidential for purposes of section 552.022; thus, we will consider its applicability to this and the remaining information.

But first, we consider your assertion of sections 552.107 and 552.111 of the Government Code to the information not subject to section 552.022, as they are potentially more encompassing than your other claimed exceptions. Section 552.107(1) protects information coming within the attorney-client privilege. Gov't Code § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications

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[1]We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

between or among clients, client representatives, lawyers, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *See* TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.*, meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege, unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein). You state the e-mails submitted as Exhibit B, and the e-mails you have marked in Exhibit E, consist of communications that were made to facilitate the rendition of legal services between the department's attorneys and staff. You have generally identified the parties to the communications. You state these communications were intended to be, and have remained, confidential. Based on your representations and our review, we agree the department may withhold the e-mails submitted as Exhibit B, and the e-mails you have marked in Exhibit E, under section 552.107 of the Government Code.

Section 552.111 of the Government Code excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. Section 552.111 encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of this privilege is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, orig. proceeding); Open Records Decision No. 538 at 1–2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, orig. proceeding). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, opinions, recommendations, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking

functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995). Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *see* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

Section 552.111 can also encompass communications between a governmental body and a third-party, including a consultant or other party with a privity of interest. *See* Open Records Decision Nos. 631 at 2 (section 552.111 encompasses information created for governmental body by outside consultant acting at governmental body's request and performing task that is within governmental body's authority), 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process), 462 at 14 (1987) (section 552.111 applies to memoranda prepared by governmental body's consultants). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561 at 9.

You state the e-mails submitted as Exhibit C consist of communications between the department's management staff and other agencies regarding policies and procedures to improve the process for handling reports of abuse and neglect. You explain the department and the other agencies are part of the Health and Human Services Adult Protective Services Facility Investigations Workgroup (the "workgroup"). Based on your representations and our review, we find the department and other agencies in the workgroup share a privity of interest for purposes of section 552.111. We further find the information we have marked in Exhibit C consists of advice, opinion, or recommendations on a policymaking matter. Accordingly, the department may withhold the information we have marked under section 552.111 of the Government Code. We conclude the remaining information at issue does not consist of advice, opinion, or recommendations on a policymaking matter, and the department may not withhold it under section 552.111 of the Government Code.

We turn next to the claims under section 552.101 of the Government Code, which excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You claim section 552.101 in conjunction with section 611.002(a) of the Health and Safety Code, which provides "[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential." Health & Safety Code § 611.002(a). Section 611.001 defines

a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. *See* Health & Safety Code §§ 611.004, .0045. Upon review, we find you have not demonstrated any of the submitted information consists of communications between a patient and a professional or records of the identity, diagnosis, evaluation, or treatment of a patient that were created or maintained by a professional. Accordingly, the department may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of section 611.002 of the Health and Safety Code.

The department claims section 552.101 of the Government Code in conjunction with section 576.005 of the Health and Safety Code, which provides, "[r]ecords of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law." *Id.* § 576.005. Upon review, we find you have failed to demonstrate how any portion of the submitted information is subject to section 576.005. Accordingly, none of the submitted information may be withheld under section 552.101 of the Government Code on that basis.

Both the department and the board claim sections 160.005(a) and 160.006(a) of the Occupations Code, which are also encompassed by section 552.101 of the Government Code. Section 160.003(b) of the Occupations Code provides, in part:

> (a) This section applies to:
>
> . . .
>
> (1) a medical peer review committee in this state; [and]
>
> (2) a physician licensed in this state or otherwise lawfully practicing medicine in this state[.]
>
> . . .
>
> (b) A person or committee subject to this section shall report relevant information to the board relating to the acts of a physician in this state if, in the opinion of the person or committee, that physician poses a continuing threat to the public welfare through the practice of medicine.

Occ. Code § 160.003(a)(2), (b). Section 160.005(a) provides a report made under subchapter A of chapter 160 of the Occupations Code is confidential. *See id.* § 160.005. Upon review, neither the department nor the board has demonstrated any of the remaining information constitutes a report to the board that is subject to the confidentiality provision of section 160.005. Accordingly, none of the remaining information is confidential under section 160.005(a) and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 160.006(a) provides:

> (a) A record, report, or other information received and maintained by the board under [Subchapter A] or Subchapter B, including any material received or developed by the board during an investigation or hearing and the identity of, and reports made by, a physician performing or supervising compliance monitoring for the board, is confidential.

Id. § 160.006(a). By its terms, section 160.006(a) makes information confidential if it is maintained by the board. The board argues some of the remaining information was developed by the board and is contained in its investigative files. However, we note, and the board acknowledges, the department may maintain duplicate copies of this information. Therefore, in this instance, the information at issue is maintained by the department. Accordingly, we conclude none of the remaining information is confidential under section 160.006(a). Accordingly, the department may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

The department raises section 160.007 of the Occupations Code, which also is encompassed by section 552.101 of the Government Code. Section 160.007 provides, in part:

> (a) Except as otherwise provided by this subtitle, each proceeding or record of a medical peer review committee is confidential, and any communication made to a medical peer review committee is privileged.

Id. § 160.007(a). "Medical peer review" is defined by the Medical Practice Act, subtitle B of title 3 of the Occupations Code, to mean "the evaluation of medical and health care services, including evaluation of the qualifications and professional conduct of professional health care practitioners and of patient care provided by those practitioners." *Id.* § 151.002(a)(6). A medical peer review committee is "a committee of a health care entity . . . or the medical staff of a health care entity, that operates under written bylaws approved by the policy-making body or the governing board of the health care entity and is authorized to evaluate the quality of medical and health care services or the competence of physicians[.]" *Id.* § 151.002(a)(8). Upon review, we find you have not demonstrated the information you seek to withhold under section 160.007 consists of records of a medical peer

review committee. Accordingly, the department may not withhold the information at issue under section 552.101 of the Government Code on that basis.

The board raises section 164.007 of the Occupations Code, which also is encompassed by section 552.101 of the Government Code. Section 164.007(c) provides:

> Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

Id. § 164.007(c). By its terms, section 164.007(c) makes information confidential when in the possession of the board, its employees, or agents. The board argues the information at issue is part of an investigative file. However, we note, and the board acknowledges, the department may maintain duplicate copies of this information. In this instance, the information at issue is in possession of the department, not the board. Furthermore, the department is not acting as an employee or agent of the board in maintaining this record. Accordingly, we conclude none of the remaining information is confidential under section 164.007 of the Occupations Code, and the department may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 48.101 of the Human Resources Code, which pertains to the disclosure of reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 provides in pertinent part as follows:

> (a) The following information is confidential and not subject to disclosure under [the Act]:
>
> (1) a report of abuse, neglect, or exploitation made under this chapter;
>
> (2) the identity of the person making the report; and
>
> (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

> (b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.
>
> . . .
>
> (d) The executive commissioner [of the Texas Health and Human Services Commission] shall adopt rules providing for the release, on request, to a person who is the subject of a report of abuse, neglect, or exploitation or to that person's legal representative of otherwise confidential information relating to that report. The department or investigating state agency shall edit the information before release to protect the confidentiality of information relating to the reporter's identity and to protect any other individual whose safety or welfare may be endangered by disclosure.

Hum. Res. Code § 48.101(a), (b), (d). You state, and some of the submitted information indicates, portions of the remaining information were used or developed in an investigation, or in providing services as a result of an investigation, conducted under chapter 48 of the Human Resources Code. *See id.* § 48.252(a)(1), 40 T.A.C. § 711.1. Such information must not be released to the public, except for a purpose consistent with chapter 48 or as provided by a department or investigating state agency rule or federal law. *See* Hum. Res. Code § 48.101(b)-(g) (permitting release of confidential information only in certain circumstances). You do not indicate, nor does it appear, that an exception to confidentiality applies in this instance. Accordingly, we conclude the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 the information be kept confidential. We have marked information that might be subject to section 552.117 of the Government Code. However, we are unable to determine if some of this information pertains to a current or former department employee. Therefore, to the extent the individual whose information we marked is a current or former department employee who timely requested confidentiality under section 552.024,

the department must withhold the information we have marked under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country.[3] Gov't Code § 552.130(a)(1), (2). Accordingly, the department must withhold the driver's license number we have marked under section 552.130 of the Government Code.[4]

Section 552.137 provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)–(c). The department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner has consented to its release.

In summary, the department may withhold the e-mails submitted as Exhibit B, and the e-mails you have marked in Exhibit E, under section 552.107 of the Government Code. The department may withhold the information we have marked under section 552.111 of the Government Code. The department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. To the extent the individual whose information we marked is a current or former department employee who timely requested confidentiality, the department must withhold the information we marked under section 552.117(a)(1) of the Government Code. The department must withhold the driver's license number we have marked under section 552.130 of the Government Code. The department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner has consented to its release. The remaining information must be released.

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[3]The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

[4]The previous determination issued in Open Records Decision No. 684 (2009) authorizes all governmental bodies to withhold a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsection 552.130(a)(1) without the necessity of seeking a decision. *See* Gov't Code § 552.130(c). Thus, the statutory amendment to section 552.130 supercedes Open Records Decision No. 684, and a governmental body may redact information subject to subsections 552.130(a)(1) only in accordance with section 552.130, not Open Records Decision No. 684.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 447516

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Susanne Mitchell
Assistant General Counsel
Texas Medical Board
P.O. Box 2018
Austin, Texas 78768
(w/o enclosures)

Filed in The District Court
of Travis County, Texas

SC DEC 09 2015
At 3:00 P.M.
Velva L. Price, District Clerk

Cause No. D-1-GN-12-001206

DEPARTMENT OF STATE HEALTH SERVICES AND TEXAS MEDICAL BOARD, *Plaintiffs,*	§	IN THE DISTRICT COURT OF
v.	§	353rd JUDICIAL DISTRICT
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, *Defendant.*	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which the Department of State Health Services and the Texas Medical Board (DSHS and TMB), sought to withhold certain information from public disclosure. All matters in controversy between Plaintiff, DSHS and TMB, and Defendant, Ken Paxton[1], Attorney General of Texas (Attorney General), arising out if 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 552.325(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 Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Ms. Andrea Ball of the Austin American Statesman, on November 23, 2015, informing her of the setting of this matter on the uncontested docket. The requestor was informed of the parties' agreement that DSHS may withhold some of the information at issue. The

[1] Because Greg Abbott was sued solely in his official capacity, Ken Paxton is now the proper defendant in this lawsuit.

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requestor was also informed of her right to intervene in the suit to contest the withholding of this information. A copy of the certified mail receipt is attached to this motion. 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 an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. DSHS and TMB and the Attorney General have agreed that in accordance with the PIA and under the facts presented, some of the information at issue is excepted from disclosure pursuant to Texas Government Code section 552.107. The information that may be redacted from the information at issue consists of attorney-client communications, and the information may be redacted in accordance with the chart contained in Thomas McClure's affidavit of November 5, 2015. DSHS agrees to release the remainder of the responsive information not already released and not excepted from disclosure by letter ruling OR2012-04340 or OR2012-04341 or the settlement agreement in this case; and

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 Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between the DSHS and TMB and the Attorney General and is a final judgment.

SIGNED the 9 day of December, 2015.

PRESIDING JUDGE

AGREED:

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Attorney for the Department of State Health Services and the Texas Medical Board

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Cause No. D-1-GN-12-001206

DEPARTMENT OF STATE HEALTH SERVICES AND TEXAS MEDICAL BOARD, *Plaintiffs,*	§	IN THE DISTRICT COURT OF
	§	353rd JUDICIAL DISTRICT
v.	§	
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, *Defendant.*	§	TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between the Department of State Health Services(DSHS) and the Texas Medical Board (TMB) and Ken Paxton,[1] Attorney General of Texas ("the Attorney General"), in his official capacity. This Agreement is made on the terms set forth below.

Background

On January 2, 2012, DSHS received a request for information under the Public Information Act ("PIA") from Andrea Ball for e-mail communications in which named persons were either the sender or a recipient. DSHS asked for an open records ruling from the Attorney General, pursuant to the PIA, Texas Government Code section 552.301.

In Letter Rulings OR2012-04340 and OR2012-04341, the Open Records Division of the Attorney General (ORD) allowed DSHS to withhold some of the information but required it to release some of the information.

DSHS released some of the requested information but disputed portions of the ruling and filed the above styled and captioned lawsuit to preserve its rights under the

[1] Because Greg Abbott was sued in his official capacity only, Ken Paxton is now the proper defendant.

PIA. After the suit was filed, TMB intervened.

DSHS submitted additional briefing to the Attorney General showing that some of the remaining information is excepted from disclosure under Texas Government Code section 552.107 because it consists of attorney-client communications. DSHS has also agreed to release some additional information. TMB, DSHS, and the Attorney General all agree to this settlement.

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. DSHS, TMB, and the Attorney General have agreed that in accordance with the PIA and under the facts presented, some of the information at issue is excepted from disclosure pursuant to Texas Government Code section 552.107. The information that may be redacted from the information at issue consists of attorney-client communications, and the information may be redacted in accordance with the chart contained in Thomas McClure's affidavit of November 5, 2015. DSHS agrees to release the remainder of the responsive information not already released and not excepted from disclosure by letter ruling OR2012-04340 or OR2012-04341 or this settlement agreement; and

2. DSHS, TMB, 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.

3. The Attorney General agrees that he will also notify the requestor, as required by TEX. GOV'T CODE § 552.325(c), of the proposed settlement and of her right to intervene to contest DSHS's right to withhold the information.

4. A final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

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

6. 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.

7. DSHS 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 DSHS has against the Attorney General or TMB arising out of the matters described in this Agreement.

8. 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 DSHS or TMB arising out of the matters described in this Agreement.

9. TMB warrants that its undersigned representative is duly authorized to execute this Agreement on behalf of TMB and its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that TMB has against DSHS or the Attorney General 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.

DEPARTMENT OF STATE HEALTH SERVICES AND TEXAS MEDICAL BOARD

By: _____
Name: ANN HARTLEY
Title: Assistant Attorney General
Financial Litigation and
Charitable Trusts Division

KEN PAXTON, ATTORNEY GENERAL OF TEXAS

By: _____
Name: KIMBERLY L. FUCHS
Title: Assistant Attorney General
Administrative Law Division