



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

September 22, 2015

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

Ms. Diana Spiller
Research Specialist/ Public Information Coordinator
Texas Commission on Jail Standards
P.O. Box 12985
Austin, Texas 78711

OR2015-19818

Dear Ms. Spiller:

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# 580174.

The Texas Commission on Jail Standards (the "commission") received a request for all documents, complaints, and e-mails revealing what triggered the inspection and notice of non-compliance for the Frio County Jail. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See Open Records Decision No. 208* at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records Decision No. 279* at 1-2 (1981)

(citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988).

You seek to withhold the identifying information of an individual who reported possible violations of minimum jail standards to the commission. You state the commission is a regulatory agency tasked with enforcement of the minimum jail standards. However, you do not inform us what criminal or civil statutes were reported to be violated, or whether the violations carry criminal or civil penalties. Therefore, we find you have failed to demonstrate the applicability of the informer's privilege to the submitted information. Accordingly, the commission may not withhold the information at issue under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. As no other exceptions to disclosure have been raised, the submitted 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/som

Ref: ID# 580174

Enc. Submitted documents

c: Requestor
(w/o enclosures)

JUN 08 2016 *WR*

At 9:20 A.M.
Velva L. Price, District Clerk

Cause No. D-1-GN-15-004801

TEXAS COMMISSION ON JAIL	§	IN THE DISTRICT COURT OF
STANDARDS,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	98th JUDICIAL DISTRICT
	§	
KEN PAXTON, ATTORNEY GENERAL	§	
OF TEXAS,	§	
<i>Defendant.</i>	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

On this date, Plaintiff the Texas Commission on Jail Standards (TCJS), and Defendant Ken Paxton, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally resolved.

This is an action brought by Plaintiff TCJS to challenge Letter Ruling OR2015-19818 (the "Ruling"). TCJS received a request from Breyana Segura (the "Requestor") pursuant to the Public Information Act (the "PIA"), Tex. Gov't Code ch. 552, for any information about what triggered the inspection and notice of non-compliance for the Frio County Jail.

All matters in controversy between Plaintiff, TCJS, and Defendant, Attorney General, 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. Breyana Segura, on May 16, 2016, informing her of the setting of this matter



on the uncontested docket on this date. The requestor was informed of the parties' agreement that TCJS will withhold a designated portion of the information at issue. The requestor was also informed of her right to intervene in the suit to contest the withholding of this information. Verification of the delivery of this letter is attached to this motion as Exhibit "B".

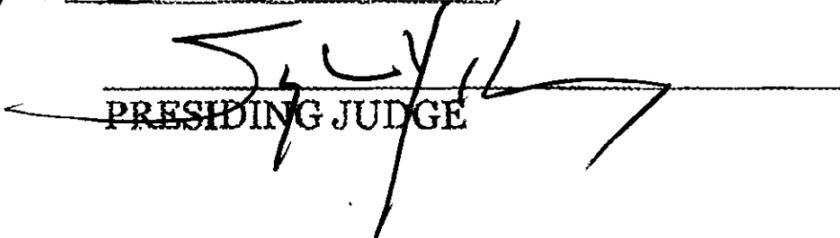
The requestor has not filed a motion to intervene.

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.

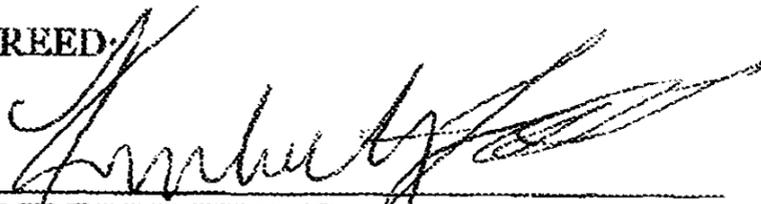
IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. TCJS and the Attorney General have agreed that in accordance with the PLA and under the facts presented, information identifying the informer who submitted the complaint about the Frio County Jail to TCJS may be redacted from the requested information. This identifying information may be withheld under Tex. Gov't Code § 552.101 in conjunction with the common-law informer's privilege.
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 TCJS and the Attorney General and is a final judgment.

SIGNED the 8th day of JUNE, 2016.


PRESIDING JUDGE

AGREED



KIMBERLY FUCHS

Texas Bar No. 24044140

Assistant Attorney General

Administrative Law Division

P. O. Box 12548, Capitol Station

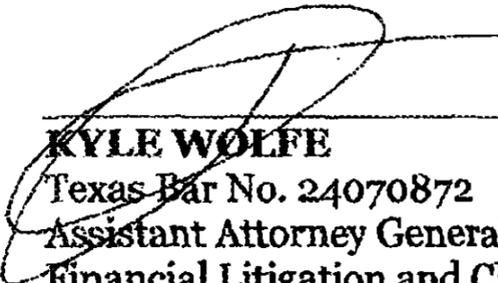
Austin, Texas 78711-2548

Telephone: (512) 475-4195

Facsimile: (512) 320-0167

Kimberly.Fuchs@texasattorneygeneral.gov

ATTORNEY FOR DEFENDANT, KEN PAXTON



KYLE WOLFE

Texas Bar No. 24070872

Assistant Attorney General

Financial Litigation and Charitable

Trusts Division

P.O. Box 12548

Austin, TX 78711-2548

Telephone: (512) 475-1369

Facsimile: (512) 477-2348

Kyle.Wolfe@texasattorneygeneral.gov

ATTORNEY FOR PLAINTIFF TEXAS COMMISSION ON JAIL STANDARDS

A

Cause No. D-1-GN-15-004801

TEXAS COMMISSION ON JAIL	§	IN THE DISTRICT COURT OF
STANDARDS,	§	
<i>Plaintiff,</i>	§	
v.	§	98th JUDICIAL DISTRICT
	§	
KEN PAXTON, ATTORNEY GENERAL	§	
OF TEXAS,	§	
<i>Defendant.</i>	§	TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between the Texas Commission on Jail Standards (TCJS) and Ken Paxton, Attorney General of Texas (the Attorney General). This Agreement is made on the terms set forth below.

Background

In July 2015, a request was made under the Public Information Act (PIA) for any information about what triggered the inspection and notice of non-compliance for the Frio County Jail. TCJS asked for an Attorney General decision on whether the information that identifies the person who reported the jail's violations could be withheld.

In Letter Ruling OR2015-19818, the Open Records Division of the Attorney General (ORD) required TCJS to release the identifying information in question, concluding that insufficient information was provided to conclude that the informer's privilege applies.

After this lawsuit was filed, TCJS submitted information and briefing to the Attorney General identifying the civil penalties applicable to the violation reported and establishing that the common-law informer's privilege applies. The Attorney General has

reviewed TCJS's request and agrees to the settlement under Tex. Gov't Code § 552.101 in conjunction with the common-law informer's privilege.

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. TCJS and the Attorney General have agreed that in accordance with the PIA and under the facts presented, the information that identifies the informer who submitted the complaint about the Frio County Jail to TCJS may be redacted from the requested information. This identifying information may be withheld under Tex. Gov't Code § 552.101 in conjunction with the common-law informer's privilege.
2. TCJS 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 TCJS'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 their own costs, including attorney fees relating to this litigation.

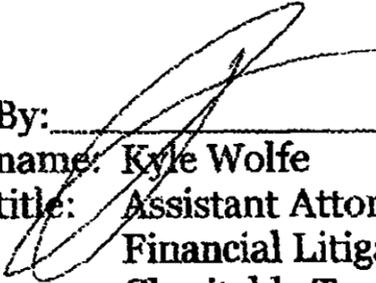
6. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being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

7. TCJS 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 TCJS has against the Attorney General arising out of the matters described in this Agreement.

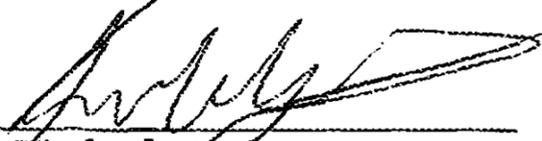
8. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General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

9. 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.

TEXAS COMMISSION ON JAIL
STANDARDS

By: 
name: Kyle Wolfe
title: Assistant Attorney General
Financial Litigation and
Charitable Trusts Division
Date: 5/12/2016

KEN PAXTON, ATTORNEY GENERAL
OF TEXAS

By: 
name: Kimberly Euchs
title: Assistant Attorney General,
Administrative Law Division
Date: 5/13/16