



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 24, 2015

Ms. Ann-Marie Sheely  
Assistant County Attorney  
County of Travis  
P.O. Box 1748  
Austin, Texas 78767

OR2015-20050

Dear Ms. Sheely:

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# 580616.

The Travis County District Attorney's Office (the "district attorney's office") received a request for (1) all current and past contracts, including any amendments and addendums, between Texas Mutual Insurance Company ("Texas Mutual") and the district attorney's office; (2) any documents, including e-mails, relating to the negotiations of any contract between Texas Mutual and the district attorney's office; and (3) any e-mails or other correspondence between the district attorney's office and Texas Mutual regarding the decision to not prosecute a case. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we must address the district attorney's office's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow

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<sup>1</sup>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 that those records contain substantially different types of information than that submitted to this office.

in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, 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. *See id.* § 552.301(e). The district attorney's office received the request for information on June 22, 2015. On July 6, 2015, the district attorney's office provided the requestor with a cost estimate for providing requested records pursuant to section 552.2615 of the Government Code. *See id.* § 552.2615 (providing governmental body shall provide requestor with estimate of charges if charges exceed \$40). You inform us payment was made by the requestor on July 7, 2015. On July 21, 2015, the district attorney's office requested a decision from this office pursuant to section 552.301(b) of the Government Code. *See id.* § 552.301(b).

Section 552.263(e) provides when a governmental body requires a deposit or bond for anticipated costs, the request for information is considered received on the date the governmental body receives the deposit or bond. *See id.* § 552.263(e). Here, the district attorney's office sent an estimate pursuant to section 552.2615, and did not require a deposit or bond from the requestor pursuant to section 552.263. We note section 552.2615 provides the submission of an estimate of charges to the requestor does not toll the governmental body's deadlines to ask for an attorney general decision under section 552.301. *See id.* § 552.2615(g) (providing "[t]he time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G"). Accordingly, we find the district attorney's office's deadlines under section 552.301 were not tolled. As noted above, the district attorney's office received the request for information on June 22, 2015. The district attorney's office's ten- and fifteen-business-day deadlines were July 7, 2015, and July 14, 2015, respectively. In this instance, as noted above, the district attorney's office requested an opinion from this office on July 21, 2015, and submitted the information required by section 552.301(e) on July 28, 2015. Consequently, we find the district attorney's office failed to comply with the requirements of 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 information is public and 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)

(governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you assert the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code, these are discretionary exceptions to disclosure and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions, governmental body may waive section 552.111), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, in failing to comply with the requirements of section 552.301, the district attorney's office has waived its claims under sections 552.108 and 552.111. Thus, the district attorney's office may not withhold any of the submitted information under section 552.108 or section 552.111 of the Government Code. However, portions of the submitted information may be subject to section 552.117 of the Government Code.<sup>2</sup> As section 552.117 can provide a compelling reason to overcome the presumption of openness under section 552.302, we will consider its applicability to the submitted information.

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). We note section 552.117 also encompasses a personal pager number, unless the pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to pager number provided and paid for by governmental body and intended for official use). 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 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 employee who did not timely request under section 552.024 the information be kept confidential. Upon review, we find the pager number we have marked is subject to section 552.117(a)(1). To the extent the individual whose information is at issue timely elected to keep this type of information confidential under section 552.024 of the Government Code and the pager service is not paid for by a governmental body, the district attorney's office must withhold the pager number we marked under section 552.117(a)(1)

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

of the Government Code. As no other exceptions to disclosure are raised, 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](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 cursive script that reads "Cole Hutchison".

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/som

Ref: ID# 580616

Enc. Submitted documents

c: Requestor  
(w/o enclosures)