



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 22, 2016

Mr. Allen J. Ahlschwede  
County Attorney  
Kimble County Attorney's Office  
P.O. Box 46  
Junction, Texas 76849

OR2016-01611

Dear Mr. Ahlschwede:

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# 595143.

The Kimble County Attorney's Office (the "county attorney's office") received a request for five categories of information, including information pertaining to restitution and other payments to the county attorney's office. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.147 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted representative samples of information responsive to two of the requested categories.<sup>2</sup> You state you are not aware of the existence of any documents covered by the remaining categories of the request and you have not located any representative samples. The Act does not require a governmental body to release information

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<sup>1</sup>You also argue section 552.305 of the Government Code applies to the submitted information. We note section 552.305 is not an exception to disclosure under the Act. *See* Gov't Code 552.305.

<sup>2</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.

that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). We also note a governmental body may not refuse to comply with the requirements of the Act on the ground of administrative inconvenience. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976); see also Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so). Moreover, if what information is requested is unclear or overly broad to a governmental body, a governmental body may ask the requestor to clarify the request or discuss with the requestor how the scope of the request might be narrowed. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). See also *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You state a review of seven years of case files will have to be completed to determine if any responsive information exists for the remaining three categories. You do not inform us the county attorney's office has asked the requestor to clarify or narrow the scope of this aspect of the request. We therefore find the county attorney's office may not refuse to comply with any portion of this request on the basis that doing so would be burdensome. Thus, to the extent any additional information responsive to the request existed on the date the county attorney's office received the request, the county attorney's office must release it. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). However, we will consider your arguments against release of the submitted information.

Next, we must address the obligations of the county attorney's office under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. See Gov't Code § 552.301(b). The county attorney's office received the request for information on October 23, 2015. Thus, the county attorney's office's ten-business-day deadline was November 6, 2015. While the county attorney's office timely raised sections 552.101 and 552.108 of the Government Code within the ten-business-day time period as required by section 552.301(b), the county attorney's office did not raise section 552.103 of the Government Code until after the ten-business-day deadline had passed. Thus, the county attorney's office failed to comply with section 552.301 of the Government Code with respect to its claim under section 552.103 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 unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (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 raise section 552.103 of the Government Code for the submitted information, this exception is discretionary in nature. This section serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute compelling reasons to withhold information. *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); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the county attorney's office has waived its claims under section 552.103 for the submitted information. Accordingly, no portion of the submitted information may be withheld under section 552.103 of the Government Code. However, we will consider your timely-raised claims under sections 552.101 and 552.108 of the Government Code.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information consists of information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to section 552.022(a)(3). The county attorney's office must release this information pursuant to section 552.022, unless it is made confidential under the Act or other law. *See id.* Although the county attorney's office raises section 552.108 of the Government Code for this information, this exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 665, 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the county attorney's office may not withhold any of the submitted information under

section 552.108. However, section 552.101 of the Government Code makes information confidential under the Act. Therefore, we will consider your argument under section 552.101 for the submitted information. Further, some of the submitted information is subject to section 552.136 of the Government Code.<sup>3</sup> As section 552.136 makes information confidential under the Act, we will also consider its applicability to the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information (1) containing highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find none of the submitted information is highly intimate or embarrassing information and of no legitimate public interest, and it may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, the county attorney’s office must withhold the information we marked under section 552.136 of the Government Code.

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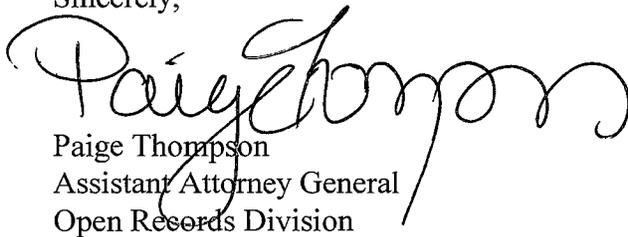
<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the county attorney's office must withhold the information we marked under section 552.136 of the Government Code. The county attorney's office must release the remaining information.<sup>4</sup>

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,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 595143

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without requesting a decision from this office under the Act. Gov't Code § 552.147(b).