



**OFFICE OF THE
DISTRICT ATTORNEY**

JOSÉ P. GARZA
DISTRICT ATTORNEY

P.O. Box 1748, Austin, TX 78767

Telephone 512/854-9400

Telefax 512/854-4206

TRUDY STRASSBURGER
FIRST ASSISTANT

January 13, 2022

Ken Paxton
Office of the Attorney General
300 West Fifteenth Street
Austin, Texas 78701

Dear General Paxton and the Office of the Attorney General:

On January 4, 2022, the Travis County District Attorney's Office (TSCDO") received a Complaint from Maria Reeve, Karisa King, Marc Duvoisin, Steve Coffman, and Manuel Garcia, (the "Complainants"), alleging that Texas Attorney General Ken Paxton ("Paxton") and the Office of the Attorney General of Texas ("OAG") failed to comply with the Texas Public Information Act's ("TPIA") requirements concerning the maintenance and production of public records from Paxton's personal electronic devices. See Exhibit A. The Complainants also allege that Paxton and the OAG failed to produce responsive documents to their TPIA request by improperly claiming documents were protected by the attorney-client privilege. See Exhibit A.

The Complainants requested our office file for declaratory judgment and injunctive relief under Texas Government Code section 552.3215.

After a thorough review of the Complaint, the TCDA's office has determined that Paxton and the OAG violated Chapter 552 of the Texas Government Code. The TCDAO will file an action against Paxton and the OAG for declaratory judgment and injunctive relief, if they do not cure the violations before the fourth day after the date they receive this notice. See Tex. Gov. Code 552.3215(j).

Allegation Number One: Complainants believe AG Paxton is improperly withholding his communications as attorney-client privileged documents.

On January 13, 2021, John Tedesco, on behalf of the Houston Chronicle and Executive Editor Maria Reeve, requested "work-related emails and electronic messages sent to or from accounts or messaging apps belonging to Attorney General Ken Paxton from Jan. 5, to Jan 13, 2021." See Exhibit B.

On January 29, 2021, Tedesco made a similar request for the work-related emails and electronic messages to or from account or messaging apps belonging to Brent Webster. See Exhibit X. On February 1, 2021, Tedesco limited his request for documents to the January 5th to January 13th time frame. See Exhibit C.

On April 9, 2021 Assistant Attorney General Matthew Taylor wrote that he had reviewed a representative sample of responsive records from Mr. Paxton and concluded that all were exempted under the attorney-client privilege of the Texas Government Code section 552.107(1). See Exhibit D.

However, the OAG released 497 pages of responsive documents from Webster's account, including some in which Paxton was a recipient. See Exhibit E.

We have determined that a violation of Chapter 552 of the Texas Government Code has occurred. Under Texas Government Code section 552.3215, Paxton and the OAG has four (4) days to cure this violation or the TCDAO will file suit in civil court seeking injunctive and declaratory relief.

Allegation Number Two: Complainants believe AG Paxton is failing to retain and turn over communications related to official business exchanged on his personal devices.

On February 12, 2021, Allie Morris, on behalf of The Dallas Morning News and Investigations Editor Karisa King, texted a message to Paxton's personal cell phone number [REDACTED]

Hi General Paxton, I understand the state did not fund your travel to the Jan 6 rally. How was that covered? In addition, I see the office did pay for Brent Webster to go to DC during that same time, where he staffed you on several new interviews related to the rally. Considering you both attended meetings with federal officials too, why was his trip covered by the state and yours wasn't given your meetings were seemingly related to state business? I sent similar communications to staff, but have not heard anything back. Thanks, Allie Morris Reporter, The Dallas Morning News." See Exhibit F

On February 22, 2021, Lauren McGaughy, acting on behalf of The Dallas Morning News and Investigations Editor Karisa King, requested "any and all communications, including text messages, that Texas Attorney General Ken Paxton received via the number [REDACTED] on Feb. 12, 2021 related to state business." See Exhibit G.

On February 26, 2021, OAG representative Marisol Bernal-Leon, stated that "the OAG has reviewed its files and has no information responsive to your request." See Exhibit G.

When asked about the OAG's failure to produce the known text message, OAG Communication Director Alejandro Garcia claimed that "unsolicited and unwelcome text messages to personal phones do not fall under the records retention law." See Exhibit H.

Texas Government Code section 552.002 defines "public Information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by an individual officer . . . in the officer's . . . official capacity and the information pertains to official business of the governmental body. Tex. Gov. Code 552.002 (a)(3).

"Official business" means any matter over which a governmental body has any authority, administrative duties, or advisory duties. Tex. Gov. Code 552.003 (2-a).

Further, information is in connection with the transaction of official business “if the information is created by, transmitted to, received by, or maintained by an officer . . . of the governmental body in the officer’s . . . official capacity . . . and pertains to official business of the governmental body.” Tex. Gov. Code 552.003 (2-a).

The definition of “public information” applies to and includes “any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.” Tex. Gov. Code 552.002 (a-2).

The Government Code further enumerates the media on which public information is recorded to include “a magnetic, optical, solid state, or other device that can store an electronic signal” and lists the forms in which the media containing public information exist to include a “text message, instant message, other electronic communication.” Tex. Gov. Code 552.002(b)(3).

In fact, the OAG has long agreed that a governmental official’s communications on a personal device are subject to a retention policy and release under the PIA:

We further note that the characterization of information as “public information” under the Act is not dependent on whether the requested records are in the possession of an individual or whether a governmental body has a particular policy or procedure that establishes a governmental body’s access to the information. Information in a public official’s personal e-mail account and home telephone records may be subject to the Act where the public official uses the personal e-mail account and home telephone to conduct public business. *See* Open Records Decision 635 at 3-4; 6-7 (1995).

When the City of Lubbock received a request for all telephone records, including text messages, from a councilman’s personal cell phone, as well as all e-mails regarding city business from the councilman’s personal e-mail account during a specified period of time relating to city business, the OAG concluded that “to the extent the cell phone records and text messages maintained by the councilman relate to the official business of the city, . . . they are subject to the Act and they must be released.” *See* Open Records Decision No. OR2009-10843 at 2.

In fact, the OAG’s Public Information Act Handbook 2020, clearly explains this concept:

Adopting the attorney general’s long-standing interpretation, the definition of “public information” now takes into account the use of electronic devices and cellular phones by public employees and officials in the transaction of official business. The Act does not distinguish between personal or employer-issued devices, but rather focuses on the nature of the communication or document. If the information was created, transmitted, received, or maintained in connection with the transaction of “official business,” meaning, “any matter over which a governmental body has any authority, administrative duties, or advisory duties,” the information constitutes public information subject to disclosure under the Act. OAG’s Public Information Act Handbook 2020, [publicinfo hb.pdf \(texasattorneygeneral.gov\)](https://publicinfo.hb.pdf.texasattorneygeneral.gov) at page 52.

We have determined that a violation of Chapter 552 of the Texas Government Code has occurred. Under Texas Government Code section 552.3215, Paxton and the OAG has four (4) days to cure this violation or the TCDAO will file suit in civil court seeking injunctive and declaratory relief.

January 13, 2022

Page 4 of 4

Allegation Number Three: Complainants believe that AG Paxton is turning over communications from other individuals as his own in response to public record requests.

On March 3, 2021, Allie Morris, on behalf of The Dallas Morning News and Investigations Editor Karisa King, requested "records of any text messages from Feb. 19, 2021 exchanged between AG Paxton and Utah Attorney General Sean Reyes related to official business, including, but not limited to, visiting a live law enforcement scenario simulators." See Exhibit I

In response, OAG representative Marisol Bernal-Leon, stated that "the OAG has reviewed its files and has located the attached documents that are responsive to your request." See Exhibit I

According to the complainants, the attached documents were identical to the documents released by Utah's OAG. See Exhibit A, J.

On March 3, 2021, Allie Morris requested an explanation for the production of documents from Governor Reyes' personal cell phone, as opposed documents gathered from General Paxton's cell phone:

Hi. Please describe how the office searched AG Paxton's phone for responsive records.

The messages are a screen shot from someone else's device. Why didn't we receive a corresponding version of the messages with AG Paxton as the sender? In addition, how did the PDF you sent me come to be in the possession of the attorney general's office?

Lastly, who is the sender of the message in both text messages provided? See Exhibit I.

OAG Assistant Attorney General and Public Information Coordinator Lauren Downey, responded, "Ms. Morris, General Paxton provided the messages." See Exhibit I.

We have determined that a violation of Chapter 552 of the Texas Government Code has occurred. Under Texas Government Code section 552.3215, Paxton and the OAG has four (4) days to cure this violation or the TCDAO will file suit in civil court seeking injunctive and declaratory relief.

Sincerely,

DocuSigned by:

Jackie Wood

87578A388F16470

Jackie Wood

Director of Public Integrity and Complex Crimes

Travis County District Attorney's Office

416 West Eleventh Street

Austin, Texas 78701