

CAUSE NO. D-1-GN-22-002976

**AMERICAN OVERSIGHT,
Plaintiff,**

v.

**TEXAS GOVERNOR GREG ABBOTT, in his
official capacity, and
TEXAS ATTORNEY GENERAL KEN
PAXTON, in his official capacity
Defendants.**

§ **IN THE DISTRICT COURT OF**
§
§
§
§ 250TH, DISTRICT COURT
§
§ **_____ JUDICIAL DISTRICT**
§
§
§
§ **TRAVIS COUNTY, TEXAS**

PETITION FOR WRIT OF MANDAMUS

TO THE HONORABLE COURT:

Plaintiff American Oversight brings this action against the Defendants, Texas Governor Greg Abbott (“Governor” or “Abbott”) and Texas Attorney General Ken Paxton (“Attorney General” or “Paxton”), seeking a writ of mandamus to compel the disclosure of public information under the Texas Public Information Act (“the Act”).

DISCOVERY LEVEL

1. Pursuant to TEX. R. CIV. P. 190.1, discovery is expected to be conducted under Level 2.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to Section 552.321 of the Act, which allows a requestor of public information to file suit in a district court for a writ of mandamus to compel a governmental body to make information available for public inspection if the governmental body refuses to supply the public information.

3. Venue is proper in Travis County, Texas under Section 552.321(b) of the Act, because the main offices of the Texas Governor and Texas Attorney General are in Travis County.

PARTIES

4. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to promoting transparency in government, educating the public about government activities, and ensuring the accountability of government officials. Through research and public information requests, American Oversight uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

5. Defendant Greg Abbott is the Governor of Texas and an officer of a “governmental body” for purposes of the Act. He may be served at 1100 San Jacinto Blvd., Austin, Texas 78701. American Oversight requests that the clerk issue citation to be served on Governor Greg Abbott at the above address.

6. Defendant Ken Paxton is the Attorney General of Texas and an officer of a “governmental body” for purposes of the Act. He may be served at the Office of the Attorney General, 209 West 14th Street, 8th Floor, Austin, Texas 78701. American Oversight requests that the clerk issue citation to be served on Attorney General Ken Paxton at the above address.

STATEMENT OF FACTS

7. American Oversight submitted open records requests to both the Office of the Governor and the Office of the Attorney General seeking records of certain communications, including emails, calendar invitations, and text messages.

American Oversight's Requests to the Office of the Governor

Abbott Non-Governmental Accounts Request

8. On January 7, 2022, American Oversight submitted a public information request to the Office of the Governor for records reflecting official communications with any non-governmental email address used by Governor Abbott (“Abbott Non-Governmental Accounts Request”). A true and correct copy of this request is attached as **Exhibit A**.

9. Specifically, the Abbott Non-Governmental Accounts Request seeks:

1. All records reflecting email communications (including any email attachments) between (a) anyone serving as Chief of Staff or Deputy Chief of Staff and (b) any non-governmental email address attributed to Governor Greg Abbott.
2. All emails sent from (a) any non-governmental email address attributed to Governor Abbott to (b) any governmental email address associated with Governor Abbott. Please include all messages, including those that have been forwarded to Governor Abbott’s governmental email address or on which Governor Abbott’s governmental email address is carbon copied or blind carbon copied.

10. The Abbott Non-Governmental Accounts Request seeks responsive records from April 1, 2020, through the date the search is conducted.

11. On January 25, 2022, the Office of the Governor assigned this request PIR No. 016-22 and submitted an Open Records Letter Ruling Request to the Open Records Division.

12. The Office of the Governor submitted a brief to the Open Records Division on February 1, 2022 (**Exhibit B**), stating that the office believed that responsive information was excepted from disclosure under Section 552.103 of the Government Code as related to pending litigation; Section 552.107 as privileged attorney-client communications; and under Section 552.111 as privileged deliberative material.

13. On March 31, 2022, the Open Records Division issued OR2022-09521 (**Exhibit C**), stating that the office of the Governor could withhold the information as privileged attorney-client communications, as well as related to pending litigation, and did not reach the issue of deliberative material.

Abbott Texts Request

14. On February 8, 2022, American Oversight submitted a request to the Office of the Governor for text messages sent or received by Governor Abbott pertaining to official business (“Abbott Texts Request”). A true and correct copy of this request is attached as **Exhibit D**.

15. Specifically, the Abbott Texts Request seeks:

All text messages or messages on messaging applications similar in form to text messages (such as Signal, WhatsApp, Facebook Messenger, Twitter direct messages, etc.) pertaining to official business sent or received by Governor Greg Abbott.

Please understand messages regarding “official business” to broadly include, at a minimum, all communications that would ordinarily comprise public information per Tex. Gov’t Code §§ 552.002(a)(3) and 552.002(a-1).¹

16. The Abbott Texts Request seeks responsive records from January 1, 2021, through the date the search is conducted.

17. On February 23, 2022, the Office of the Governor assigned this request PIR No. 080-22 and requested that American Oversight pay a deposit of \$180.00 before beginning work on the request.

18. On February 25, 2022, American Oversight sent a check for \$180.00 to the Office for the Governor.

¹ Please note that the request submitted contains an error – while the request is dated January 8, 2022, the request was actually submitted on February 8, 2022.

19. On March 21, 2022, the Office of the Governor submitted an Open Records Letter Ruling Request to the Open Records Division.

20. The Office of the Governor submitted a brief to the Open Records Division on March 28, 2022 (**Exhibit E**), stating that the office believed that responsive information was excepted from disclosure under Section 552.101 of the Government Code and the Homeland Security Act; Section 552.103 as related to pending litigation; Section 552.107 as privileged attorney-client communications; under Section 552.111 as privileged deliberative material; and Section 552.104 as related to ongoing competitive situations.

21. On April 5, 2022, the Texas Department of Public Safety submitted third-party comments stating that certain material should be excepted under Section 552.101 of the Government Code and the Homeland Security Act; and under Section 552.111 as privileged deliberative material.

22. On May 25, 2022, the Open Records Division issued OR2022-15144 (**Exhibit F**), stating that the office of the Governor must withhold some, but not all, of the information the Governor's Office believed was excepted from disclosure under Homeland Security Act; and could withhold the information marked as related to pending litigation, attorney-client communications, privileged deliberative material, and related to ongoing competitive situations.

23. As of the filing of this Petition, American Oversight has received no documents ordered to be produced by the Open Records Division pursuant to OR2022-15144 or any further communication from the Governor's Office regarding this request.

Abbott Gun Groups Request

24. On June 6, 2022, American Oversight submitted a request to the Office of the Governor for email communications between the Governor's office and specified external entities

(“Abbott Gun Groups Request”). A true and correct copy of this request is attached as **Exhibit G**.

25. Specifically, the Abbott Gun Groups Request seeks:

All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) and text messages or messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, Twitter direct messages, Facebook messages, WhatsApp, Signal, Telegram, or Parler) between (a) any of the officials listed below, and (b) any of the external entities listed below or anyone communicating on behalf of any of the entities listed below (including, but not limited to, at the listed email addresses and/or domains).

Office of the Governor Officials:

- i. Governor Greg Abbott, or anyone communicating on his behalf, such as an assistant or scheduler
- ii. Chief of Staff Luis Saenz
- iii. Deputy Chief of Staff Jordan Hale
- iv. Deputy Chief of Staff Gardner Pate
- v. Scheduling Director Michelle Stowers
- vi. Communications Director John Wittman
- vii. Press Secretary/Senior Communications Advisor Ranae Eze

External Entities:

- a. National Rifle Association, NRA Foundation, and NRA’s Institute for Legislative Action (nra.org, nrahq.org, nrafoundation.org, and nraila.org)
- b. Charles Cotton
- c. Wayne LaPierre
- d. Jason Ouimet
- e. Texas State Rifle Association (tsra.com)
- f. Gun Owners Foundation of America and Gun Owners Foundation (gunowners.org)
- g. National Association for Gun Rights (nationalgunrights.org)
- h. Second Amendment Foundation (saf.org)
- i. Citizens Committee for the Right to Keep and Bear Arms (ccrkba.org)
- j. American Suppressor Association (americansuppressorsassociation.com)
- k. National Shooting Sports Foundation (nssf.org)
- l. National Shooting Sports Foundation Political Action Committee (nssfpac.com)

26. The Abbott Gun Groups Request seeks responsive records from May 24, 2022, through June 3, 2022.

27. On June 20, 2022, the Office of the Governor responded that it had reviewed its files and had no information responsive to the request (**Exhibit H**).

American Oversight's Requests to the Office of the Attorney General

January 6th Communications Request

28. On March 25, 2021, American Oversight submitted a request to the Office of the Attorney General for email communications sent in January 2021 ("January 6th Communications Request"). A true and correct copy of this request is attached as **Exhibit I**.

29. Specifically, the January 6th Communications Request seeks:

All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) sent by Attorney General Ken Paxton or Solicitor General Judd Stone from January 6, 2021 through January 8, 2021.

In an effort to accommodate the Texas Attorney General's Office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by Attorney General Paxton and Solicitor General Stone. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both Paxton or Stone's response to an email from and the initial received message are responsive to this request and should be produced.

30. On March 25, 2021, the Office of the Attorney General assigned this request reference number R008746-032521.

31. On April 1, 2021, the Office of the Attorney General produced two responsive records to American Oversight (**Exhibit J**) and submitted an Open Records Letter Ruling Request and brief to the Open Records Division (**Exhibit K**) stating that the office believed that any

remaining responsive information was excepted from disclosure under Section 552.107 of the Government Code as privileged attorney-client communications.

32. On June 7, 2021, the Open Records Division issued OR2021-14827 (**Exhibit L**), stating that the Office of the Attorney General had “demonstrated the applicability of the attorney-client privilege to the information at issue” and therefore may withhold the responsive information.

Paxton Non-Governmental Accounts Request

33. On August 6, 2021, American Oversight submitted a request to the Office of the Attorney General for records reflecting official communications with any non-governmental email address used by Attorney General Paxton (“Paxton Non-Governmental Accounts Request”). A true and correct copy of this request is attached as **Exhibit M**.

34. Specifically, the Paxton Non-Governmental Accounts Request seeks:

1. All records reflecting email communications (including any email attachments) between (a) anyone serving as Chief of Staff or First Assistant Attorney General and (b) any non-governmental email address attributed to Attorney General Ken Paxton.
2. All emails sent from (a) any non-governmental email address attributed to Attorney General Paxton to (b) any governmental email address associated with Attorney General Paxton. Please include all messages, including those that have been forwarded to Attorney General Paxton’s governmental email address or on which Attorney General Paxton’s governmental email address is carbon copied or blind carbon copied.

35. The Paxton Non-Governmental Accounts Request seeks responsive records from April 1, 2020, through the date the search is conducted.

36. On August 6, 2021, the Office of the Attorney General assigned this request reference number R009976-080621.

37. On August 19, 2021, the Office of the Attorney General submitted an Open Records Letter Ruling Request and brief to the Open Records Division (**Exhibit N**) stating that the office believed that responsive information was excepted from disclosure under Section 552.107 of the Government Code as privileged attorney-client communications.

38. On October 26, 2021, the Open Records Division issued OR2021-29515 (**Exhibit O**), stating that the Office of the Attorney General had “demonstrated the applicability of the attorney-client privilege to the information at issue” and therefore may withhold the responsive information.

Paxton Texts Request

39. On May 2, 2022, American Oversight submitted a request to the Office of the Attorney General for text messages sent or received by Attorney General Paxton (“Paxton Texts Request”) pertaining to official business. A true and correct copy of this request is attached as **Exhibit P**.

40. Specifically, the Paxton Texts Request seeks:

All text messages or messages on messaging applications similar in form to text messages (such as Signal, WhatsApp, Facebook Messenger, Twitter direct messages, etc.) pertaining to official business sent or received by Attorney General Ken Paxton.

Please understand messages regarding “official business” to broadly include, at a minimum, all communications that would ordinarily comprise public information per Tex. Gov’t Code §§ 552.002(a)(3) and 552.002(a-1), on both government-issued and personal devices.

41. The Paxton Texts Request seeks responsive records from November 3, 2020, through the date the search is conducted.

42. On May 2, 2022, the Office of the Attorney General assigned this request reference number R012488-050222.

43. On May 5, 2022, the Office of the Attorney General produced two responsive records to American Oversight (**Exhibit Q**). The Office of the Attorney General that same day submitted an Open Records Letter Ruling Request and brief to the Open Records Division (**Exhibit R**) stating that the office believed that responsive information was excepted from disclosure under Section 552.107 of the Government Code as privileged attorney-client communications.

44. As of the filing of this Petition, the Open Records Division has not yet issued an opinion regarding this request.

Paxton Gun Groups Request

45. On June 7, 2022, American Oversight submitted a request to the Office of the Attorney General for email communications between the Attorney General's office and specified external entities ("Paxton Gun Groups Request"). A true and correct copy of this request is attached as **Exhibit S**.

46. Specifically, the Paxton Gun Groups Request seeks:

All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) and text messages or messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, Twitter direct messages, Facebook messages, WhatsApp, Signal, Telegram, or Parler) between (a) any of the officials listed below, and (b) any of the external entities listed below or anyone communicating on behalf of any of the entities listed below (including, but not limited to, at the listed email addresses and/or domains).

Officials:

- i. Ken Paxton, Attorney General, or anyone communicating on his behalf, such as an assistant or scheduler
- ii. Brent Webster, First Assistant Attorney General
- iii. Grant Dortman, Deputy First Assistant Attorney General
- iv. Lesley French, Chief of Staff
- v. Aaron Reitz, Deputy Attorney General of Legal Strategy
- vi. Alejandro Garcia, Director of Communications

- vii. Judd Stone, Solicitor General, or anyone communicating on his behalf, such as an assistant or scheduler
- viii. Tom Taylor, Director of Administration

External Entities:

- a. National Rifle Association, NRA Foundation, and NRA's Institute for Legislative Action (nra.org, nrahq.org, nrafoundation.org, and nraila.org)
- b. Charles Cotton
- c. Wayne LaPierre
- d. Jason Ouimet
- e. Texas State Rifle Association (tsra.com)
- f. Gun Owners Foundation of America and Gun Owners Foundation (gunowners.org)
- g. National Association for Gun Rights (nationalgunrights.org)
- h. Second Amendment Foundation (saf.org)
- i. Citizens Committee for the Right to Keep and Bear Arms (ccrkba.org)
- j. American Suppressor Association (americansuppressorsassociation.com)
- k. National Shooting Sports Foundation (nssf.org)
- l. National Shooting Sports Foundation Political Action Committee (nssfpac.com)

47. The Paxton Gun Groups Request seeks responsive records from May 24, 2022, through June 3, 2022.

48. On June 8, 2022, the Office of the Attorney General assigned this request reference number R012836-060822.

49. On June 21, 2022, the Office of the Attorney General responded that it had reviewed its files and had no information responsive to the request (**Exhibit T**).

The Requested Records Are Public Information

50. It is the declared public policy of the state of Texas that “each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees.” TEX. GOV'T CODE § 552.001(a). “The people, in delegating authority, do not give their public servants the right to

decide what is good for the people to know and what is not good for them to know.” *Id.* In accordance with that policy, the provisions of the Public Information Act “shall be liberally construed to implement this policy” and “liberally construed in favor of granting a request for information.” *Id.* at § 552.001(a)-(b).

51. Public information under the Act is “information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by a government body; for a government body where the body has access to the information; or by an individual officer or employee of a governmental body in their “official capacity and the information pertains to official business of the governmental body.” TEX. GOV’T CODE § 552.002(a).

52. 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 or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.” TEX. GOV’T CODE § 552.002(a-1).

53. Public information “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’T CODE § 552.002(a-2).

54. The records sought by American Oversight are electronic communications and records reflecting electronic communications made in connection with the transaction of official business.

55. A governmental body is required to produce public information “promptly,” meaning “as soon as possible under the circumstances, that is, within a reasonable time, without delay.” TEX. GOV’T CODE § 552.221(a).

56. If a governmental body “wishes to withhold [information] from public disclosure . . . that it considers to be within one of the exceptions” of the Act, the Attorney General has the authority to render a decision regarding “whether the information is within that exception.” TEX. GOV’T CODE § 552.301.

57. Information is excepted from disclosure under the Act if it is “information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct.” TEX. GOV’T CODE § 552.107(1). This includes any communication “that is demonstrated to be protected by the attorney-client privilege as defined in Texas Rule of Evidence 503.” TEX. ATT’Y GEN. ORD-676 (2002).

58. The attorney-client privilege protects only “communications made to facilitate the rendition of professional legal services to the client.” TEX. R. EVID. 302(b)(1).

59. The Abbott Non-Governmental Accounts Request seeks records reflecting communications with any non-governmental email address held by Governor Abbott for an approximately twenty-one-month time period, and it defies belief that every responsive record created for nearly two years was related to pending litigation and/or to facilitate the rendition of professional legal services.

60. The Abbott Texts Request seeks all text messages or similar communications sent or received by Governor Abbott in connection with official business for a one-year period, and it is highly implausible that every text message Governor Abbott sent or received during that time,

save a few that the Open Records Division have determined must be released, was either excepted from disclosure or was not connected to official business.

61. Despite the Open Records Division ruling that the Office of the Governor must release some records on May 25, 2022, more than a month before this Petition was filed, Plaintiff has yet to receive any records responsive to the Abbott Texts Request.

62. The Abbott Gun Groups request seeks all electronic communications between Governor Abbott and senior officials, on the one hand, and select individuals and organizations that focus on firearms, on the other hand, for a period of time surrounding the mass shooting in Uvalde, Texas. During this time period, Governor Abbott cancelled an in-person appearance at the National Rifle Association's convention but gave a prerecorded address. *See Andrew Zhang, Greg Abbott, Dan Patrick Cancel In-Person NRA Convention Appearances In Wake of Uvalde Mass Shooting*, Tex. Trib., May 26, 2022, <https://www.texastribune.org/2022/05/26/greg-abbott-nra-uvalde/>. It is not credible that no senior official in the Governor's Office was communicating with external entities focused on gun advocacy during a period of time that included both a major mass shooting event and the National Rifle Association annual meeting in the state.

63. The January 6th Communications Request seeks all email communications sent by Attorney General Ken Paxton or Solicitor General Judd Stone during a three-day period of time during which the Attorney General appeared at a political rally in Washington, D.C. *See Benjamin Wermund, Ken Paxton at Trump's D.C. Rally: 'We will not quit fighting.'*, Houston Chron., Jan. 6, 2021, <https://www.houstonchronicle.com/politics/texas/article/Paxton-Trump-DC-rally-election-2020-georgia-15850073.php>. It is highly implausible that a mere two email chains from the Solicitor General were the only communications not made to "facilitate the rendition of professional legal services" on those days.

64. The Paxton Non-Governmental Accounts Request seeks records reflecting communications with any non-governmental email address held by Attorney General Paxton for a time period of over a year, and it is not credible that every responsive record was made to “facilitate the rendition of professional legal services” during that time period.

65. The Paxton Texts Request seeks all text messages or similar communications sent or received by Attorney General Paxton in connection with official business for an eighteen-month time period, and it is highly implausible that every text message Attorney General Paxton sent or received during that time, save the two produced exchanges, was either made to “facilitate the rendition of professional legal services” or was not connected to official business.

66. The Paxton Gun Groups request seeks all electronic communications between Attorney General Paxton and senior officials in the Attorney General’s Office and select individuals and organizations that focus on firearms for a period of time surrounding the mass shooting in Uvalde, Texas. It is not credible that no senior official in the Attorney General’s Office was communicating with external entities focused on gun advocacy during a period of time that included both a major mass shooting event and the National Rifle Association annual meeting in the state.

67. Because the stated exceptions cannot plausibly be applied broadly to records responsive to the Abbott Non-Governmental Accounts Request, Abbott Texts Request, Abbott Gun Groups Request, January 6th Communications Request, Paxton Non-Governmental Accounts Request, Paxton Texts Request, and Paxton Gun Groups Request, and these records are not “expressly confidential under other law,” they are “public information” under Section 552.022(a)(3) of the Act and must be produced.

Claim for Relief: Request for Writ of Mandamus

68. Because Defendants Abbott and Paxton have refused to supply public information, Plaintiff American Oversight seeks a writ of mandamus pursuant to Section 552.321(a) of the Act compelling Defendants to produce the requested public records.

Claim for Relief: Costs of Litigation and Attorneys' Fees

69. Pursuant to Section 552.323(a) of the Act, Plaintiff American Oversight seeks an award of costs of litigation and reasonable attorneys' fees against Defendants Abbott and Paxton.

Conditions Precedent

70. Pursuant to TEX. R. CIV. P. 54, all conditions precedent have been performed or have occurred.

Request for Disclosures

Pursuant to the Texas Rules of Civil Procedure 194, Plaintiff requests Defendants to disclose, within 30 days of service of their first Answer or general appearance, the information or material described in TEXAS RULES OF CIVIL PROCEDURE 194.2(b).

Prayer

Upon final hearing, Plaintiff American Oversight prays that this Court issue a writ of mandamus requiring Defendants Abbott and Paxton to make the requested public information available; award Plaintiff American Oversight its court costs, costs of litigation, and reasonable attorneys' fees; and award Plaintiff American Oversight post-judgment interest to the fullest extent allowed by law. Plaintiff American Oversight prays for such other and further relief, whether at law or in equity, to which it may show itself to be justly entitled.

Dated: June 30, 2022

Respectfully submitted,

/s/ Catherine L. Robb
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** Pro Hac Vice Forthcoming*

Counsel for Plaintiff American Oversight

PLAINTIFF'S EXHIBIT A



January 7, 2022

VIA EMAIL

Office of the Governor
Public Information Request
General Counsel Division
P.O. Box 12428
Austin, TX 78711
publicrecords@gov.texas.gov

Re: Public Information Request

Dear Public Information Officer:

Pursuant to the Texas Public Information Act, as codified at Tex. Code ch. 552, American Oversight makes the following request for public records.

Requested Records

American Oversight requests that the Office of the Governor promptly produce the following:

1. All records reflecting email communications (including any email attachments) between (a) anyone serving as Chief of Staff or Deputy Chief of Staff and (b) any non-governmental email address attributed to Governor Greg Abbott.
2. All emails sent from (a) any non-governmental email address attributed to Governor Abbott to (b) any governmental email address associated with Governor Abbott. Please include all messages, including those that have been forwarded to Governor Abbott's governmental email address or on which Governor Abbott's governmental email address is carbon copied or blind carbon copied.

Please provide all responsive records from April 1, 2020, through the date the search is conducted.

Please search all records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting government business sent or received on the personal account of a governmental authority's officer or employee constitutes a record for purposes of the Texas Public Information Act.¹

¹ Tex. Code § 552.002(a-2); *see also Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).



American Oversight insists that your office use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; governmental authorities may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your office can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with Tex. Code § 552.267(a), American Oversight requests a waiver of fees associated with processing this request for records, because such a waiver “is in the public interest because providing the copy of the information primarily benefits the general public.” The requested records are directly related to the work of state officials, with the potential to shed light on work-related communications Governor Greg Abbott may be having on his personal communication accounts. This matter is a subject

of substantial public interest in Texas.² Accordingly, release of records that may help the public understand the operations and activities of state officials is in the public interest.

Release of the requested records will primarily benefit the public.³ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the requested records is not in American Oversight's financial interest, but is rather in the public interest. American Oversight is committed to transparency and makes the responses governmental authorities provide to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the public would benefit from an enhanced understanding of the government's activities through American Oversight's analysis and publication of these records. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁴

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁵ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization's investigations into misconduct and corruption in state governments;⁶ the posting of records related to the Trump Administration's contacts with Ukraine and analyses of those contacts;⁷ posting records and editorial content about the federal government's response to the Coronavirus pandemic;⁸ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze

² See, e.g., Jay Root, *Texas AG Condone Governor Using Private Email for Public Business*, *Governing* (Aug. 25, 2015), <https://www.governing.com/archive/abbott-withholding-records-with-paxtons-blessing.html>.

³ Tex. Code § 552.267(a).

⁴ American Oversight currently has approximately 15,600 followers on Facebook and 109,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Dec. 7, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Dec. 7, 2021).

⁵ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁶ *State Investigations*, American Oversight, <https://www.americanoversight.org/states>.

⁷ *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

⁸ See generally *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; see, e.g., *CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁹ the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;¹⁰ and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹¹

Accordingly, American Oversight qualifies for a fee waiver. If your office denies our request for a fee waiver, please notify American Oversight of any anticipated fees or costs in excess of \$40 prior to incurring such costs or fees.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your county on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Emma Lewis at records@americanoversight.org or (202) 919-6303. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Emma Lewis

Emma Lewis

on behalf of

American Oversight

⁹ See generally *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹⁰ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹¹ See generally *Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; see, e.g., *New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

PLAINTIFF'S EXHIBIT B

Subject: 016-22 Wishingrad - Notice of Comments Submitted
Date: Tuesday, February 1, 2022 at 5:12:00 PM Eastern Standard Time
From: Public Records
To: 'AO Records'
Attachments: 016-22 Wishingrad - Submitted AG Brief.pdf, TX-GOV-22-0025.pdf

EXTERNAL SENDER

February 1, 2022

Ms. Sarah Wishingrad
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
records@americanoversight.org
VIA EMAIL ONLY

RE: OOG PIR # 016-22

Dear Ms. Wishingrad:

This email is in response to your public information request to the Office of the Governor (“OOG”), received by the OOG on January 7, 2022. A copy of your request is attached to this email.

The OOG previously requested a ruling pursuant to section 552.301(b) of the Government Code on January 25, 2022. Today, the OOG submitted written comments to the Office of the Attorney General pursuant to section 552.301(e) of Government Code. A copy of the OOG’s comments submitted to the Open Records Division is attached.

If you have any questions, please contact me at 512-475-2256 or publicrecords@gov.texas.gov.

Thank you,

Kieran Hillis
Public Information Coordinator
Assistant General Counsel
Office of Governor Greg Abbott

From: AO Records <records@americanoversight.org>
Sent: Friday, January 7, 2022 1:57 PM
To: Public Records <publicrecords@gov.texas.gov>
Subject: 016-22 Wishingrad - Request for Information

[**WARNING**] - The sender of this email could not be validated, and may not match the display name.

[**EXTERNAL SENDER**] - Do not click on links or open attachments in unexpected messages.

Dear Public Information Officer:

Please find attached a request for records under the Texas Public Information Act.

Sincerely,

--

Sarah Wishingrad

Pronouns: she/her

Paralegal

American Oversight

records@americanoversight.org

www.americanoversight.org | @weareoversight

PIR: TX-GOV-22-0025



GOVERNOR GREG ABBOTT

February 1, 2022

Justin Gordon
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Open Records Letter Ruling Request
OOG ID#: 016-22

Dear Mr. Gordon:

On January 7, 2022, the Office of the Governor (the "OOG") received a request under the Public Information Act (the "PIA") from Ms. Sarah Wishingrad.¹ A copy of the request is attached as Exhibit A. Pursuant to section 552.301(a), the OOG timely requested a decision from your office on whether the responsive information is excepted from disclosure under the PIA. That request is attached as Exhibit C. Our office now submits this brief in accordance with section 552.301(e).

The OOG asserts the responsive information is excepted from required public disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. A representative sample of this information is attached as Exhibit B. The OOG has copied the requestor as a recipient of this brief pursuant to section 552.301(e-1).

I. Information Excepted From Required Public Disclosure Under Section 552.103: Pending Litigation

Information related to pending or reasonably anticipated litigation involving a governmental body is excepted from required public disclosure. Section 552.103 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or

¹ The OOG was closed on January 17, 2022, in observance of Martin Luther King, Jr. Day. Additionally, the OOG observed a skeleton crew day on January 19, 2022.

a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Tex. Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See* Tex. Att'y Gen. Open Records Decision No. 551 at 4 (1990). However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Tex. Att'y Gen. Open Records Decision No. 349 (1982), Tex. Att'y Gen. Open Records Decision No. 320 (1982). Further, the applicability of section 552.103(a) ends once the litigation has concluded. Tex. Att'y Gen. Op. MW-575 (1982); Tex. Att'y Gen. Open Records Decision No. 350 (1982).

On May 28, 2020, a lawsuit styled *Galovelho, LLC, v. Abbott, et al.*, Case No. 219-02595-2020, was filed in the 219th Judicial District Court of Collin County, Texas. The *Galovelho* lawsuit names Governor Abbott as a defendant, and involves Governor Abbott's issuance of Executive Orders GA 08, GA 14, GA 18, GA 21, GA 22, and GA 23, and his authority to act under chapter 418 of the Texas Government Code.

On August 25, 2020, a lawsuit styled *Stand for Something Group Live, LLC v. Abbott, et al.*, Cause No. D-1-GN-20-004403, was filed in the 200th Judicial District Court of Travis County, Texas. This lawsuit, which also names Governor Abbott as a defendant, is currently pending on appeal before the Third Court of Appeals. Plaintiffs in the *Stand for Something* lawsuit allege numerous constitutional violations arising from the Governor's issuance of Executive Orders GA 28 and GA 30; specifically, as those orders relate to the operation of bars and restaurants in response to the COVID-19 pandemic.

On August 10, 2021, a lawsuit styled *City of San Antonio v. Abbott*, Cause No. 2021CI16133 was filed in the 45th Judicial District Court of Bexar County, Texas. This lawsuit likewise names Governor Abbott as a defendant and is currently pending on appeal before the Fourth Court of Appeals. In this lawsuit, plaintiffs have sought a temporary injunction regarding the enforcement of Executive Order GA 38. Plaintiffs challenge the constitutionality of chapter 418 of the Texas

Government Code and the Governor's issuance Executive Order GA 38 under the Texas Disaster Act.²

Thus, litigation to which the OOG is a party was pending with respect to these matters at the time the OOG received the request at issue. Accordingly, because the information marked within Exhibit B relates to pending litigation, the OOG asserts this information is excepted from disclosure under section 552.103 of the Government Code.

II. Information Excepted From Required Public Disclosure Under Section 552.107: Privileged Attorney-Client Communications

The OOG asserts some of the information at issue consists of privileged attorney-client communications. Section 552.107(1) of the Government Code excepts from required public disclosure information "that the attorney general . . . is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct." Tex. Gov't Code § 552.107. Section 552.107 protects information that falls within the attorney-client privilege. 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. Tex. Att'y Gen. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that 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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *Id.* 503(b)(1)(A), (B), (C), (D), (E). Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), 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).

Section 552.107(1) applies to communications between a governmental body and its attorney made in confidence to further the attorney's rendering of professional legal services to the governmental body. Attorney General opinions applying section 552.107(1) have permitted governmental bodies to withhold information their attorneys have received or generated in the capacity of a legal advisor. *See* Tex. Att'y Gen. Open Records Decision No. 462 at 10-11 (1987) (applying section 3(a)(7), predecessor to Section 552.107(1)). 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).

The information marked within Exhibit B under section 552.107 reflects communications between attorneys for the OOG and OOG officials and staff discussing certain legal matters. Thus, the information at issue constitutes or reveals communications between privileged parties that were made for the purpose of providing professional legal services to the OOG. Further, these

² The OOG notes several additional lawsuits to which the OOG is a party were pending on the date the OOG received the instant request for information. The lawsuits at issue raise similar causes of action against the validity and enforcement of Executive Order GA 38, as it relates to governmental entities' authority to impose masking requirements. As the relevant aspects of these lawsuits are largely duplicative of the *City of San Antonio* litigation, the OOG has not cited these suits in this brief.

communications were not and are not intended to be disclosed and have not been disclosed to non-privileged parties. Therefore, the OOG contends the information marked within Exhibit B may be withheld under section 552.107(1) of the Government Code.

III. Information Excepted From Required Public Disclosure Under Section 552.111: Deliberative Process Privilege

Section 552.111 of the Government Code excepts from required public disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Tex. Gov’t Code § 552.111. Your office has construed section 552.111 to encompass the deliberative process privilege by excepting from disclosure internal communications consisting of advice, recommendations, or opinions reflecting the policy making processes of a governmental body. Tex. Att’y Gen. Open Records Decision No. 615 at 5 (1993); accord *City of Garland v. Dallas Morning News*, 969 S.W.2d 548, 556 (Tex. App.—Dallas 1998) (“Section 552.111 . . . excepts only those internal communications consisting of advice, recommendations, and opinions reflecting the policy-making processes of the governmental body at issue.”), *aff’d*, 22 S.W.3d 351 (Tex. 2000). 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 Tex. Att’y Gen. Open Records Decision No. 313 at 3 (1982). The purpose of section 552.111 is “to protect advice and opinions on policy matters and to encourage frank and open discussion within an agency in connection with its decision-making processes.” *Dallas Morning News*, 969 S.W.2d at 556.

The information marked within Exhibit B includes such communications subject to section 552.111 of the Government Code. First, the information includes communications between OOG employees and officials communicating in their official policy-making capacities. Second, this information includes communications and deliberations between OOG employees and officials and representatives of other state agencies communicating in their official policy-making capacities. The OOG, as the chief executive office of the State of Texas, shares a privity of interest and common deliberative process with these parties with regard to the policy-making matters at issue. In the communications, the individuals were providing advice, opinions, and recommendations about matters of broad scope, and the release of these deliberations would have a chilling effect on the frank and open discussion necessary for the decision-making process.

Portions of the marked information also consist of factual information that is inextricably intertwined with the material involving advice, opinion, and recommendations as to make separation of the data impractical.

Thus, the OOG asserts that the information marked under section 552.111 within Exhibit B is excepted from disclosure under section 552.111 of the Government Code and the deliberative process privilege.

IV. Conclusion

On behalf of the OOG and pursuant to section 552.301 of the Government Code, I respectfully request an open records letter ruling as to the applicability of the above raised exceptions. If you have any questions or need additional information, please contact me at (512) 475-2256.

Sincerely,



Kieran Hillis
Public Information Coordinator
Assistant General Counsel
Office of Governor Greg Abbott

cc: Ms. Sarah Wishingrad
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
VIA EMAIL ONLY



GOVERNOR GREG ABBOTT

February 1, 2022

Justin Gordon
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RE: OOG ID# 016-22

Dear Mr. Gordon:

In accordance with section 552.308(b) of the Government Code, the Office of the Governor certifies the undersigned sent the attached letter related to OOG ID# 016-22 to the Open Records Division of the Office of the Attorney General by depositing the letter into interagency mail on February 1, 2022.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Hillis", with a stylized flourish at the end.

Kieran Hillis
Public Information Coordinator
Assistant General Counsel
Office of Governor Greg Abbott

EXHIBIT A

From: [AO Records](#)
To: [Public Records](#)
Subject: 016-22 Wishingrad - Request for Information
Date: Friday, January 7, 2022 1:57:29 PM
Attachments: [TX-GOV-22-0025.pdf](#)

[WARNING] - The sender of this email could not be validated, and may not match the display name.

[EXTERNAL SENDER] - Do not click on links or open attachments in unexpected messages.

Dear Public Information Officer:

Please find attached a request for records under the Texas Public Information Act.

Sincerely,

--

Sarah Wishingrad

Pronouns: she/her

Paralegal

American Oversight

records@americanoversight.org

www.americanoversight.org | @weareoversight

PIR: TX-GOV-22-0025



January 7, 2022

VIA EMAIL

Office of the Governor
Public Information Request
General Counsel Division
P.O. Box 12428
Austin, TX 78711
publicrecords@gov.texas.gov

Re: Public Information Request

Dear Public Information Officer:

Pursuant to the Texas Public Information Act, as codified at Tex. Code ch. 552, American Oversight makes the following request for public records.

Requested Records

American Oversight requests that the Office of the Governor promptly produce the following:

1. All records reflecting email communications (including any email attachments) between (a) anyone serving as Chief of Staff or Deputy Chief of Staff and (b) any non-governmental email address attributed to Governor Greg Abbott.
2. All emails sent from (a) any non-governmental email address attributed to Governor Abbott to (b) any governmental email address associated with Governor Abbott. Please include all messages, including those that have been forwarded to Governor Abbott's governmental email address or on which Governor Abbott's governmental email address is carbon copied or blind carbon copied.

Please provide all responsive records from April 1, 2020, through the date the search is conducted.

Please search all records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting government business sent or received on the personal account of a governmental authority's officer or employee constitutes a record for purposes of the Texas Public Information Act.¹

¹ Tex. Code § 552.002(a-2); *see also Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).



American Oversight insists that your office use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; governmental authorities may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your office can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with Tex. Code § 552.267(a), American Oversight requests a waiver of fees associated with processing this request for records, because such a waiver “is in the public interest because providing the copy of the information primarily benefits the general public.” The requested records are directly related to the work of state officials, with the potential to shed light on work-related communications Governor Greg Abbott may be having on his personal communication accounts. This matter is a subject

of substantial public interest in Texas.² Accordingly, release of records that may help the public understand the operations and activities of state officials is in the public interest.

Release of the requested records will primarily benefit the public.³ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the requested records is not in American Oversight's financial interest, but is rather in the public interest. American Oversight is committed to transparency and makes the responses governmental authorities provide to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the public would benefit from an enhanced understanding of the government's activities through American Oversight's analysis and publication of these records. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁴

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁵ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization's investigations into misconduct and corruption in state governments;⁶ the posting of records related to the Trump Administration's contacts with Ukraine and analyses of those contacts;⁷ posting records and editorial content about the federal government's response to the Coronavirus pandemic;⁸ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze

² See, e.g., Jay Root, *Texas AG Condone Governor Using Private Email for Public Business*, *Governing* (Aug. 25, 2015), <https://www.governing.com/archive/abbott-withholding-records-with-paxtons-blessing.html>.

³ Tex. Code § 552.267(a).

⁴ American Oversight currently has approximately 15,600 followers on Facebook and 109,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Dec. 7, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Dec. 7, 2021).

⁵ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁶ *State Investigations*, American Oversight, <https://www.americanoversight.org/states>.

⁷ *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

⁸ See generally *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; see, e.g., *CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁹ the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;¹⁰ and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹¹

Accordingly, American Oversight qualifies for a fee waiver. If your office denies our request for a fee waiver, please notify American Oversight of any anticipated fees or costs in excess of \$40 prior to incurring such costs or fees.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your county on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Emma Lewis at records@americanoversight.org or (202) 919-6303. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Emma Lewis

Emma Lewis
on behalf of
American Oversight

⁹ See generally *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹⁰ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹¹ See generally *Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; see, e.g., *New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

EXHIBIT C



GOVERNOR GREG ABBOTT

January 25, 2022

Justin Gordon
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Open Records Letter Ruling Request
OOG ID#: 016-22

Dear Mr. Gordon:

On January 7, 2022, the Office of the Governor (the "OOG") received a request under the Public Information Act (the "PIA") from Ms. Sarah Wishingrad.¹ A copy of the request is attached as Exhibit A.

The OOG asserts information responsive to this request is excepted from disclosure under the PIA. Specifically, the OOG invokes all of the exceptions provided by, and the exceptions incorporated into, sections 552.101 through 552.160 of the Government Code.

Pursuant to section 552.301(a) of the Government Code, this letter is submitted in order to seek a decision as to whether the exceptions apply. To assist in your review, the OOG will provide written comments and the responsive documents, or a representative sample of the responsive documents, not later than the 15th business day from the date the request was received.

Should you need additional information, please feel free to contact me at 512-475-2256 or via email at publicrecords@gov.texas.gov.

Sincerely,

A handwritten signature in blue ink, appearing to be "K. H.", likely representing Governor Greg Abbott.

¹ The OOG was closed on January 17, 2022, in observance of Martin Luther King, Jr. Day. Additionally, the OOG observed a skeleton crew day on January 19, 2022.

Kieran Hillis
Public Information Coordinator
Assistant General Counsel
Office of Governor Greg Abbott

cc: Ms. Sarah Wishingrad
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
VIA EMAIL ONLY



GOVERNOR GREG ABBOTT

January 25, 2022

Justin Gordon
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RE: OOG ID# 016-22

Dear Mr. Gordon:

In accordance with section 552.308(b) of the Government Code, the Office of the Governor certifies the undersigned sent the attached letter related to OOG ID# 016-22 to the Open Records Division of the Office of the Attorney General by depositing the letter into interagency mail on January 25, 2022.

Sincerely,

A handwritten signature in blue ink, appearing to read "KH", with a horizontal line extending to the right.

Kieran Hillis
Public Information Coordinator
Assistant General Counsel
Office of Governor Greg Abbott

PLAINTIFF'S EXHIBIT C



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2022

Mr. Kieran Hillis
Public Information Coordinator and Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2022-09521

Dear Mr. Hillis:

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# 939410 (OOG ID# 016-22).

The Office of the Governor (the "governor's office") received a request for specified e-mails involving the governor and certain staff members during a certain date range. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* 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 that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "to facilitate 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.

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 that submitted to this office.

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 that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. 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: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit 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). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. 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 information you marked consists of communications between attorneys for the governor’s office and governor’s office employees and officials in their capacity as clients. You state the communications were made for the purpose of providing legal services to the governor’s office. You state the communications were intended to be and have remained confidential. Based on these representations and our review, we find the information at issue consists of privileged attorney-client communications. Thus, the governor’s office may withhold the information you marked under section 552.107(1) of the Government Code.²

Section 552.103 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You state several lawsuits were pending against the governor's office when it received the instant request for information.³ You state the remaining information is related to the pending lawsuits because it pertains to the claims in the lawsuits. Based on your representations, the submitted documentation, and our review of the remaining information, we find litigation was pending when the governor's office received this request for information, and the remaining information is related to the pending litigation for the purposes of section 552.103. Therefore, the governor's office may withhold the remaining information under section 552.103(a) of the Government Code.⁴

We note once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the governor's office may withhold the information you marked under section 552.107(1) of the Government Code. The governor's office may withhold the remaining information under section 552.103(a) of the Government Code.

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.

³ You state the pending lawsuits are: *Galovelho, LLC v. Abbott*, Case No. 219-02595-2020, in the 219th Judicial District Court of Collin County, Texas; *Stand for Something Group Live, LLC v. Abbott*, Cause No. D-1-GN-20-004403, in the 200th Judicial District Court of Travis County, Texas; and *City of San Antonio v. Abbott*, Cause No. 2021CI16133, in the 45th Judicial District Court of Bexar County, Texas.

⁴ As our ruling is dispositive, we need not address your remaining argument against disclosure of the remaining information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/be

Ref: ID# 939410

Enc. Submitted documents

c: Requestor
(w/o enclosures)

PLAINTIFF'S EXHIBIT D



January 8, 2022

VIA EMAIL

Office of the Governor
Public Information Request
General Counsel Division
P.O. Box 12428
Austin, TX 78711
publicrecords@gov.texas.gov

Re: Public Information Request

Dear Public Information Officer:

Pursuant to the Texas Public Information Act, as codified at Tex. Code ch. 552, American Oversight makes the following request for public records.

Requested Records

American Oversight requests that your office promptly produce the following:

All text messages or messages on messaging applications similar in form to text messages (such as Signal, WhatsApp, Facebook Messenger, Twitter direct messages, etc.) pertaining to official business sent or received by Governor Greg Abbott.

Please understand messages regarding “official business” to broadly include, at a minimum, all communications that would ordinarily comprise public information per Tex. Gov’t Code §§ 552.002(a)(3) and 552.002(a-1).

Please provide all responsive records from January 1, 2021 through the date the search is conducted.

American Oversight insists that your office use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; governmental authorities may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Please search all records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting government business sent or received on the personal



account of a governmental authority's officer or employee constitutes a record for purposes of the Texas Public Information Act.¹

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your office can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with Tex. Code § 552.267(a), American Oversight requests a waiver of fees associated with processing this request for records, because such a waiver “is in the public interest because providing the copy of the information primarily benefits the general public.” The requested records are directly related to the work of state officials, with the potential to shed light on communications Governor Abbott may be having over text or similar messages about government business, given recent reporting about texts that Abbott’s office have not previously released . This matter is a subject of substantial public interest in Texas.² Accordingly, release of records that may help the public understand the operations and activities of state officials is in the public interest.

¹ Tex. Code § 552.002(a-2); *see also Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).

² *See e.g., Jay Root, Exclusive: All-Night ERCOT Meeting Raises Questions About Abbott’s Role in Power Pricing Debacle*, Houston Chronicle (Apr. 23, 2021, 1:01 PM),

Release of the requested records will primarily benefit the public.³ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the requested records is not in American Oversight's financial interest, but is rather in the public interest. American Oversight is committed to transparency and makes the responses governmental authorities provide to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the public would benefit from an enhanced understanding of the government's activities through American Oversight's analysis and publication of these records. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁴

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁵ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization's investigations into misconduct and corruption in state governments;⁶ the posting of records related to the Trump Administration's contacts with Ukraine and analyses of those contacts;⁷ posting records and editorial content about the federal government's response to the Coronavirus pandemic;⁸ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁹ the posting of records

<https://www.houstonchronicle.com/politics/texas/article/All-night-ERCOT-meeting-raises-questions-about-16124189.php>.

³ Tex. Code § 552.267(a).

⁴ American Oversight currently has approximately 15,600 followers on Facebook and 114,000 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Jan. 19, 2022), American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Jan. 19, 2022).

⁵ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁶ *State Investigations*, American Oversight, <https://www.americanoversight.org/states>.

⁷ *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

⁸ *See generally The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; *see, e.g., CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

⁹ *See generally Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; *see, e.g., Border Wall*

related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;¹⁰ and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹¹

Accordingly, American Oversight qualifies for a fee waiver. If your office denies our request for a fee waiver, please notify American Oversight of any anticipated fees or costs in excess of \$40 prior to incurring such costs or fees.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your county on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Emma Lewis at records@americanoversight.org or (202) 919-6303. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Emma Lewis
Emma Lewis
on behalf of
American Oversight

Investigation Report: No Plans, No Funding, No Timeline, No Wall, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹⁰ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹¹ *See generally Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; *see, e.g., New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

PLAINTIFF'S EXHIBIT E

Subject: 080-22 Winters - Notice of Comments Submitted
Date: Monday, March 28, 2022 at 5:21:39 PM Eastern Daylight Time
From: Public Records
To: 'AO Records'
Attachments: 080-22 Winters - Submitted AG Brief.pdf, TX-GOV-22-0144.pdf

EXTERNAL SENDER

March 28, 2022

Mr. Dylan Winters
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
records@americanoversight.org
VIA EMAIL ONLY

RE: OOG PIR # 080-22

Dear Mr. Winters:

This email is in response to your modified public information request to the Office of the Governor (“OOG”), received by the OOG on March 7, 2022. A copy of your request is attached to this email.

The OOG previously requested a ruling pursuant to section 552.301(b) of the Government Code on March 21, 2022. Today, the OOG submitted written comments to the Office of the Attorney General pursuant to section 552.301(e) of Government Code. A copy of the OOG’s comments submitted to the Open Records Division is attached.

If you have any questions, please contact me at 512-475-2256 or publicrecords@gov.texas.gov.

Thank you,

Kieran Hillis
Public Information Coordinator
Assistant General Counsel
Office of Governor Greg Abbott

From: Dylan Winters <dylan.winters@americanoversight.org>
Sent: Wednesday, February 9, 2022 12:33 PM
To: Public Records <publicrecords@gov.texas.gov>
Subject: 080-22 Winters - Corrected Request

[**WARNING**] - The sender of this email could not be validated, and may not match the display name.

[**EXTERNAL SENDER**] - Do not click on links or open attachments in unexpected messages.

Dear Public Information Officer:

Unfortunately, our last request had an incorrect tracking number. Please find the corrected request attached.

Sincerely,
Dylan Winters (he/him)
Paralegal
American Oversight
records@americanoversight.org
www.americanoversight.org | @weareoversight

PIR: TX-GOV-22-0144

From: Dylan Winters <dylan.winters@americanoversight.org> on behalf of AO Records
<records@americanoversight.org>
Date: Tuesday, February 8, 2022 at 11:32 AM
To: "<publicrecords@gov.texas.gov>" <publicrecords@gov.texas.gov>
Subject: Public Information Request (TX-GOV-22-0129)

Dear Public Information Officer:

Please find attached a request for records under the Texas Public Information Act.

Sincerely,
Dylan Winters (he/him)
Paralegal
American Oversight
records@americanoversight.org
www.americanoversight.org | @weareoversight

PIR: TX-GOV-22-0129



GOVERNOR GREG ABBOTT

March 28, 2022

Justin Gordon
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Open Records Letter Ruling Request
OOG ID#: 080-22

Dear Mr. Gordon:

On February 8, 2022, the Office of the Governor (the "OOG") received an initial request under the Public Information Act (the "PIA") from Mr. Dylan Winters.¹ On February 23, 2022, the OOG sent Mr. Winters a cost estimate for the requested information and required a deposit for the full estimated cost. On March 7, 2022, the OOG received payment for the full estimated cost from the requestor. Copies of the request, the cost estimate, and the payment received are attached as Exhibit A. Pursuant to section 552.301(a), the OOG timely requested a decision from your office on whether the responsive information is excepted from disclosure under the PIA. That request is attached as Exhibit C. Our office now submits this brief in accordance with section 552.301(e).

The OOG asserts the responsive information is excepted from required public disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. A representative sample of this information is attached as Exhibit B. Release of some of the responsive information may also implicate the interests of third parties. The OOG has notified these third parties of their rights to submit arguments against disclosure of the information at issue pursuant to section 552.305(b). The OOG has copied the requestor as a recipient of this brief pursuant to section 552.301(e-1).

¹ The OOG was closed on February 21, 2022 in observance of Presidents Day. Additionally, the OOG observed a skeleton crew day on March 2, 2022.

I. Information Excepted From Required Public Disclosure Under Section 552.101 and the Texas Homeland Security Act

Section 552.101 of the Government Code excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Tex. Gov’t Code § 552.101. Section 552.101 encompasses the Texas Homeland Security Act, chapter 418 of the Government Code. Section 418.176 provides in part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to the staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

(2) relates to a tactical plan of the provider[.]

Section 418.177 provides:

Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. §§ 418.176(a), .177. Section 421.002 of the Government Code establishes that the Governor “shall direct homeland security in this state and shall develop a statewide homeland security strategy[.]” and this strategy “shall coordinate homeland security activities among and between local, state, and federal agencies and the private sector and must include specific plans for . . . information sharing[.] . . . [and] protecting critical infrastructure” *See id.* § 421.002(a)-(b)(2), (4). Additionally, facilities related to the state’s borders are “critical infrastructure.” *See id.* § 421.001(2) (defining critical infrastructure as “all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation.”).

The information marked in Exhibit B reveals tactical plans of emergency response providers in relation to operations at a border of the State of Texas. The information further identifies possible vulnerabilities related to the border, including staffing levels and locations of law enforcement. The release of the information at issue could aid terrorists and other criminals in avoiding detection and in the commission of crimes against critical infrastructure related to the state’s border. Accordingly, because this information relates to certain staffing and tactical plans related to preventing, detecting, responding to, or investigating acts of terrorism or related criminal activity

and possible vulnerabilities of critical infrastructure, the OOG asserts the information marked in Exhibit B is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with sections 418.176 and 418.177 of the Government Code.

II. Information Excepted From Required Public Disclosure Under Section 552.107: Privileged Attorney-Client Communications

The OOG asserts some of the information at issue consists of privileged attorney-client communications. Section 552.107(1) of the Government Code excepts from required public disclosure information “that the attorney general . . . is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct.” Tex. Gov’t Code § 552.107. Section 552.107 protects information that falls within the attorney-client privilege. 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. Tex. Att’y Gen. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that 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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *Id.* 503(b)(1)(A), (B), (C), (D), (E). Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), 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).

Section 552.107(1) applies to communications between a governmental body and its attorney made in confidence to further the attorney’s rendering of professional legal services to the governmental body. Attorney General opinions applying section 552.107(1) have permitted governmental bodies to withhold information their attorneys have received or generated in the capacity of a legal advisor. *See* Tex. Att’y Gen. Open Records Decision No. 462 at 10-11 (1987) (applying section 3(a)(7), predecessor to Section 552.107(1)). 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).

The information marked within Exhibit B under section 552.107 reflects communications between attorneys from the OOG and OOG officials and staff discussing certain legal matters. Thus, the information at issue constitutes or reveals communications between privileged parties that were made for the purpose of providing professional legal services to the OOG. Further, these communications were not and are not intended to be disclosed and have not been disclosed to non-privileged parties. Therefore, the OOG contends the information marked within Exhibit B may be withheld under section 552.107(1) of the Government Code.

III. Information Excepted From Required Public Disclosure Under Section 552.103: Pending Litigation

Information related to pending or reasonably anticipated litigation involving a governmental body is excepted from required public disclosure. Section 552.103 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Tex. Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See Tex. Att'y Gen. Open Records Decision No. 551 at 4 (1990)*. However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *Tex. Att'y Gen. Open Records Decision No. 349 (1982)*, *Tex. Att'y Gen. Open Records Decision No. 320 (1982)*. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *Tex. Att'y Gen. Op. MW-575 (1982)*; *Tex. Att'y Gen. Open Records Decision No. 350 (1982)*.

On August 10, 2021, a lawsuit styled *City of San Antonio v. Abbott*, Cause No. 2021CI16133 was filed in the 45th Judicial District Court of Bexar County, Texas. This lawsuit, which names Governor Abbott as a defendant, is currently pending on appeal before the Fourth Court of Appeals. In this lawsuit, plaintiffs have sought a temporary injunction regarding the enforcement of Executive Order GA 38. Plaintiffs challenge the constitutionality of chapter 418 of the Texas Government Code and the Governor's issuance Executive Order GA 38 under the Texas Disaster Act.²

² The OOG notes several additional lawsuits to which the OOG is a party were pending on the date the OOG received the instant request for information. The lawsuits at issue raise similar causes of action against the validity and enforcement of Executive Order GA 38, as it relates to governmental entities' authority to impose masking

Additionally, a lawsuit styled *La Unión Del Pueblo Entero* (“LUPE”) v. *Abbott*, Case No. 5:21-cv-844 was filed in the United States District Court for the Western District of Texas, San Antonio Division on September 3, 2021. Governor Abbott is likewise named as a defendant in this lawsuit. Plaintiffs in this lawsuit seek an injunction against the enforcement of certain provisions of Senate Bill 1 (“SB 1”), which was passed during the 87th Texas Legislature. In this case, plaintiffs raise constitutional challenges, as well as violations of the Voter Rights Act and Americans with Disabilities Act, against the relevant provisions of SB 1.³

On January 4, 2022, a lawsuit styled *Abbott v. Biden*, Case No. 6:22-cv-00003, was filed by Governor Abbott in his official capacity in the United States District Court for the Eastern District of Texas, Tyler Division. On January 25, 2022, Governor Abbott, joined by another state governor as plaintiff, filed an amended complaint in this pending lawsuit. The plaintiffs allege several constitutional and statutory violations related to a federally-issued vaccine mandate for certain state military personnel.

Thus, litigation to which the OOG is a party was pending with respect to these matters at the time the OOG received the request at issue. Accordingly, because the information marked within Exhibit B relates to pending litigation, the OOG asserts this information is excepted from disclosure under section 552.103 of the Government Code.

IV. Information Excepted From Required Public Disclosure Under Section 552.111: Deliberative Process Privilege

Section 552.111 of the Government Code excepts from required public disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Tex. Gov’t Code § 552.111. Your office has construed section 552.111 to encompass the deliberative process privilege by excepting from disclosure internal communications consisting of advice, recommendations, or opinions reflecting the policy making processes of a governmental body. Tex. Att’y Gen. Open Records Decision No. 615 at 5 (1993); accord *City of Garland v. Dallas Morning News*, 969 S.W.2d 548, 556 (Tex. App.—Dallas 1998) (“Section 552.111 . . . excepts only those internal communications consisting of advice, recommendations, and opinions reflecting the policy-making processes of the governmental body at issue.”), *aff’d*, 22 S.W.3d 351 (Tex. 2000). 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 Tex. Att’y Gen. Open Records Decision No. 313 at 3 (1982). The purpose of section 552.111 is “to protect advice and opinions on policy matters and to encourage frank and open discussion within an agency in connection with its decision-making processes.” *Dallas Morning News*, 969 S.W.2d at 556. 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 Tex. Att’y Gen. Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses

requirements. As the relevant aspects of these lawsuits are largely duplicative of the *City of San Antonio* litigation, the OOG has not cited these suits in this brief.

³ The OOG notes several additional lawsuits to which the OOG is a party were pending on the date the OOG received the instant request for information. The lawsuits at issue raise similar causes of action against the validity and enforcement of provisions of SB 1. As the relevant aspects of these lawsuits are largely duplicative of the *LUPE* litigation, the OOG has not cited these suits in this brief.

communications with party with which governmental body has privity of interest or common deliberative process).

The information marked within Exhibit B includes such communications subject to section 552.111 of the Government Code. First, the information includes communications between OOG employees and officials communicating in their official policy-making capacities. Second, this information includes communications and deliberations between OOG employees and officials and representatives of other state agencies communicating in their official policy-making capacities. The OOG, as the chief executive office of the State of Texas, shares a privity of interest and common deliberative process with these parties with regard to the policy-making matters at issue. In the communications, the individuals were providing advice, opinions, and recommendations about matters of broad scope, and the release of these deliberations would have a chilling effect on the frank and open discussion necessary for the decision-making process.

Portions of the marked information also consist of factual information that is inextricably intertwined with the material involving advice, opinion, and recommendations as to make separation of the data impractical.

Thus, the OOG asserts that the information marked under section 552.111 within Exhibit B is excepted from disclosure under section 552.111 of the Government Code and the deliberative process privilege.

V. Information Excepted From Required Public Disclosure Under Section 552.104: Information Relating to Competition or Bidding

Section 552.104 of the Government Code provides, in part:

(a) Information is excepted from the requirements of Section 552.021 if a governmental body demonstrates that release of the information would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.

(b) . . . [T]he requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.

Tex. Gov't Code § 552.104(a), (b). Accordingly, to protect information under section 552.104, a governmental body must demonstrate the release of the information would harm the governmental body's interests by providing an advantage to a competitor or bidder 1) in a particular ongoing competitive situation; 2) when a competitive situation at issue is set to reoccur; or 3) when a governmental body has a specific and demonstrable intent to enter into a certain competitive situation again in the future. *See id.* § 552.104(a). Additionally, even if information is listed in a category under section 552.022(a) of the Government Code, a governmental body may withhold such information under section 552.104. *See id.* § 552.104(b).

Section 481.022 of the Government Code, charges the OOG's Economic Development and Tourism Office with "[facilitating] the location, expansion, and retention of domestic and international business investment to the state" and "[promoting] and [administering] business and community economic development programs and services in the state, including business incentive programs." *Id.* § 481.022(2), (3). Expansion and recruitment of businesses to states is competitive by its very nature, and Texas is a competitor with other states in that competitive situation. The OOG works tirelessly to promote Texas, in part by providing various incentives and employing strategies designed to attract new business to the state or assist with the expansion of an existing business within the state. The State of Texas has a specific interest in recruiting and expanding businesses and, as required by its specific statutory directive, the OOG engages in this competitive situation on a recurring basis.

In the business expansion and recruitment competitive situation, competing states seek to know which companies are considering expanding or relocating and what incentives the companies are being offered in order to gain an advantage in drawing business to the competing state. Additionally, companies considering relocation or expansion also seek to know the OOG's approaches, methodologies, and strategies in business recruitment and expansion situations in order to achieve terms more favorable to the companies, which result in terms less favorable for the state. Because of this extremely competitive atmosphere, each time the OOG engages with—or may engage with—a business in an effort to facilitate the business's relocation or expansion in Texas, it presents a competitive situation.

The information marked within Exhibit B relates to particular ongoing competitive situations. Specifically, the information relates to business prospects that have undertaken or proposed to undertake business expansion projects in Texas (the "Companies"). The information at issue reflects internal communications related to investigating, coordinating, and gathering information regarding potential incentives under consideration to be offered to the Companies. The information also reflects the OOG's approaches, methodologies, and strategies that are employed in similar competitive situations.

The OOG has made no public announcements detailing any projected incentives and no incentive award packages or agreements have been finalized between the OOG and any of the Companies. Additionally, release of the information relating to the state's economic development recruitment efforts and potential incentives in these matters would seriously disadvantage Texas's ability to compete for the relocation or expansion of similar business prospects to the state in the future. Further, the OOG employs similar approaches, methodologies, and strategies on a recurring basis to evaluate and recruit potential recipients. In addition, any incentive packages under consideration by the OOG could be used to determine the OOG's internal valuation of similar companies and projects in the future. If competing states know the approaches, methodologies, and strategies used by the OOG to evaluate and recruit companies, it will harm the state in the current business recruitment and expansion situation, and will harm the OOG's ability to recruit businesses on behalf of Texas in the future. Additionally, if companies considering relocation or expansion to the state have access to such information, they will obtain unfair leverage in negotiations related to incentive packages.

In short, the release of the information marked under section 552.104 within Exhibit B will provide a competitive advantage to other states competing with Texas in recurring business expansion and

recruitment competitive situations. Additionally, release of the information at issue would harm the OOG's negotiating position in current recruitments, which will create a competitive disadvantage in both current and recurring business expansion and recruitment competitive situations. Accordingly, because the release of the information at issue would harm the OOG's interests in ongoing competitive situations, as well as recurring competitive situations, the OOG seeks to withhold the information marked within Exhibit B under section 552.104 of the Government Code.

VI. Conclusion

On behalf of the OOG and pursuant to section 552.301 of the Government Code, I respectfully request an open records letter ruling as to the applicability of the above raised exceptions. If you have any questions or need additional information, please contact me at (512) 475-2256.

Sincerely,



Kieran Hillis
Public Information Coordinator
Assistant General Counsel
Office of Governor Greg Abbott

cc: Mr. Dylan Winters
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
VIA EMAIL ONLY

Third Parties
VIA EMAIL ONLY



GOVERNOR GREG ABBOTT

March 28, 2022

Justin Gordon
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RE: OOG ID# 080-22

Dear Mr. Gordon:

In accordance with section 552.308(b) of the Government Code, the Office of the Governor certifies the undersigned sent the attached letter related to OOG ID# 080-22 to the Open Records Division of the Office of the Attorney General by depositing the letter into interagency mail on March 28, 2022.

Sincerely,

A handwritten signature in blue ink, appearing to read "KH", with a horizontal line extending to the right.

Kieran Hillis
Public Information Coordinator
Assistant General Counsel
Office of Governor Greg Abbott

EXHIBIT A

From: [Dylan Winters](#)
To: [Public Records](#)
Subject: 080-22 Winters - Corrected Request
Date: Wednesday, February 9, 2022 12:38:18 PM
Attachments: [TX-GOV-22-0144.pdf](#)

[WARNING] - The sender of this email could not be validated, and may not match the display name.

[EXTERNAL SENDER] - Do not click on links or open attachments in unexpected messages.

Dear Public Information Officer:

Unfortunately, our last request had an incorrect tracking number. Please find the corrected request attached.

Sincerely,

Dylan Winters (he/him)

Paralegal

American Oversight

records@americanoversight.org

www.americanoversight.org | @weareoversight

PIR: TX-GOV-22-0144

From: Dylan Winters <dylan.winters@americanoversight.org> on behalf of AO Records <records@americanoversight.org>

Date: Tuesday, February 8, 2022 at 11:32 AM

To: "publicrecords@gov.texas.gov" <publicrecords@gov.texas.gov>

Subject: Public Information Request (TX-GOV-22-0129)

Dear Public Information Officer:

Please find attached a request for records under the Texas Public Information Act.

Sincerely,

Dylan Winters (he/him)

Paralegal

American Oversight

records@americanoversight.org

www.americanoversight.org | @weareoversight

PIR: TX-GOV-22-0129



January 8, 2022

VIA EMAIL

Office of the Governor
Public Information Request
General Counsel Division
P.O. Box 12428
Austin, TX 78711
publicrecords@gov.texas.gov

Re: Public Information Request

Dear Public Information Officer:

Pursuant to the Texas Public Information Act, as codified at Tex. Code ch. 552, American Oversight makes the following request for public records.

Requested Records

American Oversight requests that your office promptly produce the following:

All text messages or messages on messaging applications similar in form to text messages (such as Signal, WhatsApp, Facebook Messenger, Twitter direct messages, etc.) pertaining to official business sent or received by Governor Greg Abbott.

Please understand messages regarding “official business” to broadly include, at a minimum, all communications that would ordinarily comprise public information per Tex. Gov’t Code §§ 552.002(a)(3) and 552.002(a-1).

Please provide all responsive records from January 1, 2021 through the date the search is conducted.

American Oversight insists that your office use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; governmental authorities may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Please search all records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting government business sent or received on the personal



account of a governmental authority's officer or employee constitutes a record for purposes of the Texas Public Information Act.¹

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your office can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with Tex. Code § 552.267(a), American Oversight requests a waiver of fees associated with processing this request for records, because such a waiver “is in the public interest because providing the copy of the information primarily benefits the general public.” The requested records are directly related to the work of state officials, with the potential to shed light on communications Governor Abbott may be having over text or similar messages about government business, given recent reporting about texts that Abbott’s office have not previously released . This matter is a subject of substantial public interest in Texas.² Accordingly, release of records that may help the public understand the operations and activities of state officials is in the public interest.

¹ Tex. Code § 552.002(a-2); *see also Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).

² *See e.g., Jay Root, Exclusive: All-Night ERCOT Meeting Raises Questions About Abbott’s Role in Power Pricing Debacle*, Houston Chronicle (Apr. 23, 2021, 1:01 PM),

Release of the requested records will primarily benefit the public.³ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the requested records is not in American Oversight's financial interest, but is rather in the public interest. American Oversight is committed to transparency and makes the responses governmental authorities provide to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the public would benefit from an enhanced understanding of the government's activities through American Oversight's analysis and publication of these records. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁴

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁵ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization's investigations into misconduct and corruption in state governments;⁶ the posting of records related to the Trump Administration's contacts with Ukraine and analyses of those contacts;⁷ posting records and editorial content about the federal government's response to the Coronavirus pandemic;⁸ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁹ the posting of records

<https://www.houstonchronicle.com/politics/texas/article/All-night-ERCOT-meeting-raises-questions-about-16124189.php>.

³ Tex. Code § 552.267(a).

⁴ American Oversight currently has approximately 15,600 followers on Facebook and 114,000 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Jan. 19, 2022), American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Jan. 19, 2022).

⁵ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁶ *State Investigations*, American Oversight, <https://www.americanoversight.org/states>.

⁷ *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

⁸ *See generally The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; *see, e.g., CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

⁹ *See generally Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; *see, e.g., Border Wall*

related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;¹⁰ and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹¹

Accordingly, American Oversight qualifies for a fee waiver. If your office denies our request for a fee waiver, please notify American Oversight of any anticipated fees or costs in excess of \$40 prior to incurring such costs or fees.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your county on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Emma Lewis at records@americanoversight.org or (202) 919-6303. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Emma Lewis
Emma Lewis
on behalf of
American Oversight

Investigation Report: No Plans, No Funding, No Timeline, No Wall, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹⁰ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹¹ *See generally Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; *see, e.g., New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.



GOVERNOR GREG ABBOTT

February 23, 2022

Mr. Dylan Winters
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
records@americanoversight.org
VIA EMAIL ONLY

Re: Open Records Letter Ruling Request
OOG ID#: 080-22

Dear Mr. Winters:

This letter is in response to your modified public information request to the Office of the Governor (the "OOG"), which was received on February 8, 2022.¹

The OOG has determined that complying with the request received on February 8, 2022, will result in the imposition of a charge that exceeds \$40. Therefore, we are providing you with this cost estimate generated in response to that request as required by section 552.2615 of the Texas Government Code. The estimated cost for producing the information responsive to your request is itemized below.

List of Charges:

Description	Qty x Price	Total
Labor Charge (\$15.00/hr)	10 hr x \$15.00	\$150.00
Overhead Charges	20% of Allowable Labor	\$30.00
Total cost		\$180.00

The estimated charges exceed \$100.00; therefore, as allowed by section 552.263(a) of the Government Code, the OOG requires a deposit of 100% (\$180.00) before we begin working on your request. There is not a less costly method to obtain copies of the information as-requested. However, less costly options to view or obtain copies of information—such as narrowing or modifying the request—are available. To discuss these possible options, you may contact the OOG at 512-475-2256 or publicrecords@gov.texas.gov.

¹ The OOG was closed for business on February 21, 2022, in observance of Presidents Day.

Pursuant to section 552.2615 of the Texas Government Code, you are required to take certain steps in order to avoid the withdrawal of this request for information. This section of the Public Information Act requires:

- (1) the requestor to provide the governmental body with a mailing, facsimile transmission, or electronic mail address to receive the itemized statement and that it is the requestor's choice which type of address to provide;
- (2) the OOG to inform the requestor that the request is considered automatically withdrawn if the requestor does not respond in writing to the itemized statement within 10 business days after the date the statement is sent to the requestor. This response is limited by law to a response that the requestor will accept the estimated charges, will modify the request in response to the itemized statement, or that notifies the OOG that the requestor has sent to the Office of the Attorney General a complaint alleging that the requestor has been overcharged for being provided with a copy of the public information; and
- (3) the requestor to respond to the statement by delivering the written response to the governmental body either by mail, in person, by facsimile transmission, or by electronic mail.

See Gov't Code § 552.2615. In consideration of the above, if you agree to accept these charges, please do so in writing as detailed above. You may send a copy of this letter with a check or money order in the amount of \$180.00, payable to: "Office of the Governor" with OOG PIR ID# 080-22 appearing on the check or money order. Please address the envelope to Office of the Governor, Attention of Amy Ruzicka, P.O. Box 12428, Austin, Texas 78711. If you decide to send your check via overnight delivery or hand deliver payment, the physical address is Office of the Governor, 1100 San Jacinto, Austin, Texas 78701.

Please note that pursuant to section 552.263(f) of the Government Code, your information request will be withdrawn by operation of law if the OOG does not receive a written response under section 552.2615 of the Government Code by March 10, 2022.

Finally, please be aware that even if payment is made, the OOG may seek a ruling from the Open Records Division of the Office of the Attorney General before certain information is released. Upon receipt of that ruling, the OOG may send a revised cost estimate pursuant to section 552.2615(c) of the Government Code.

Sincerely,



Kieran Hillis
Public Information Coordinator
Assistant General Counsel
Office of Governor Greg Abbott



February 25, 2022

VIA CERTIFIED MAIL

Office of the Governor
Attention of Amy Ruzicka
P.O. Box 12428
Austin, Texas 78711

RE: Public Information Request (TX-GOV-22-0144)

Dear FOIA Officer:

Enclosed please find a check in the amount of \$180.00 as the filing fee for American Oversight's above-mentioned open records request. The invoice for this request is also enclosed.

Please feel free to contact American Oversight at records@americanoversight.org with any follow-up questions or concerns.

Best,

A handwritten signature in black ink that reads "Shira Weiner".

Shira Weiner



American Oversight Inc
1030 15th St NW Suite B255
Washington, DC 20005

Amalgamated Bank
15-167/540

1284

2/25/22

PAY TO THE
ORDER OF

Office of the Governor

\$

180.00

One hundred eighty and 00/100

DOLLARS

MEMO

TX-GOV-22-0144

Shirley Wams

AUTHORIZED SIGNATURE

⑈001284⑈ ⑆054001673⑆ 81017697⑈

EXHIBIT C



GOVERNOR GREG ABBOTT

March 21, 2022

Justin Gordon
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Open Records Letter Ruling Request
OOG ID#: 080-22

Dear Mr. Gordon:

On February 8, 2022, the Office of the Governor (the "OOG") received an initial request under the Public Information Act (the "PIA") from Mr. Dylan Winters.¹ On February 23, 2022, the OOG sent Mr. Winters a cost estimate for the requested information and required a deposit for the full estimated cost. On March 7, 2022, the OOG received payment for the full estimated cost from the requestor. Copies of the request, the cost estimate, and the payment received are attached as Exhibit A.

The OOG asserts information responsive to this request is excepted from disclosure under the PIA. Specifically, the OOG invokes all of the exceptions provided by, and the exceptions incorporated into, sections 552.101 through 552.160 of the Government Code.

Pursuant to section 552.301(a) of the Government Code, this letter is submitted in order to seek a decision as to whether the exceptions apply. To assist in your review, the OOG will provide written comments and the responsive documents, or a representative sample of the responsive documents, not later than the 15th business day from the date the request was received.

Should you need additional information, please feel free to contact me at 512-475-2256 or via email at publicrecords@gov.texas.gov.

¹ The OOG was closed on February 21, 2022 in observance of Presidents Day. Additionally, the OOG observed a skeleton crew day on March 2, 2022.

Sincerely,



Kieran Hillis
Public Information Coordinator
Assistant General Counsel
Office of Governor Greg Abbott

cc: Mr. Dylan Winters
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
VIA EMAIL ONLY



GOVERNOR GREG ABBOTT

March 21, 2022

Justin Gordon
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RE: OOG ID# 080-22

Dear Mr. Gordon:

In accordance with section 552.308(b) of the Government Code, the Office of the Governor certifies the undersigned sent the attached letter related to OOG ID# 080-22 to the Open Records Division of the Office of the Attorney General by depositing the letter into interagency mail on March 21, 2022.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Hillis", is written over a horizontal line.

Kieran Hillis
Public Information Coordinator
Assistant General Counsel
Office of Governor Greg Abbott

PLAINTIFF'S EXHIBIT F



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 25, 2022

Mr. Kieran Hillis
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2022-15144

Dear Mr. Hillis:

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# 950403 [OOG ID# 080-22].

The Office of the Governor (the "governor's office") received a request for specified communications during a certain time period.¹ You state some information has been released. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.107, and 552.111 of the Government Code. Additionally, you notified the Texas Department of Public Safety ("DPS") of the request for information and of the right to submit arguments to this office as to why the information at issue should not be released. See Gov't Code § 552.304 (providing interested party may submit

¹ You provide documentation demonstrating, the governor's office sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code. See Gov't Code §§ 552.222(b), .2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. See *id.* § 552.263(a). You inform us the governor's office received payment on March 7, 2021. See *id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

comments stating why information should or should not be released). We received comments from DPS. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses sections 418.176 and 418.177 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Section 418.176 provides, in relevant part, as follows:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to staffing requirements of an emergency response provider, including a law enforcement agency, a fire-fighting agency, or an emergency services agency;

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Id. § 418.176(a). Section 418.177 provides:

Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

² 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 that submitted to this office.

Id. § 418.177. The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. See Open Records Decision No. 649 at 3 (1996). As with any confidentiality provision, a governmental body asserting these sections must adequately explain how the responsive information falls within the scope of the provisions. See Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The governor's office states release of the information at issue would "reveal tactical plans of emergency response providers in relation to operations at a border of the State of Texas" as well as "possible vulnerabilities related to the border, including staffing levels and locations of law enforcement" and "release of the information at issue could aid terrorists and other criminals in avoiding detection and in the commission of crimes against critical infrastructure related to the state's border." DPS states the information at would provide wrong-doers, terrorists, and other criminals with invaluable information concerning law enforcement procedures and intelligence used to protect the state's border areas. Based upon these representations and our review, we find most of the information you marked relates to staffing requirements and tactical plans of emergency response providers maintained by the governor's office for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, with the exception of the information we marked for release, the governor's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with sections 418.176 and 418.177 of the Government Code.³ However, we find the governor's office and DPS have failed to demonstrate the remaining information at issue relates to staffing requirements or a tactical plan of an emergency response provider or relates to an assessment by or for a governmental entity that was collected, assembled, or maintained by or for the governor's office for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. Therefore, the governor's office may not withhold any portion of the remaining information at issue under section 552.101 of the Government Code in conjunction with sections 418.176 or 418.177 of the Government Code.

Section 552.103 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or political subdivision, as a consequence of the person's office or employment, is or may be a party.

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). See ORD 551.

The governor's office states that, prior to its receipt of the instant request for information, a lawsuit against the governor's office styled *City of San Antonio v. Abbott*, Cause No. 2021-CI-16133 was filed in the 45th Judicial District of Bexar County, Texas, and is currently pending on appeal before the Fourth Court of Appeals. The governor's office further states the information you marked is related to the pending litigation because it pertains to the claims in the lawsuit. Based upon these representations and our review of the information at issue, we find the information you marked related to the litigation that was pending when the governor's office received the request for information. Accordingly, the governor's office may withhold the information you marked under section 552.103 of the Government Code.⁴

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

⁴ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would “harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). The governor’s office explains it is tasked by statute with “[facilitating] the location, expansion, and retention of domestic and international business investment to the [S]tate [of Texas (the “state”)]” and “[promoting] and [administering] business and community economic development programs and services in the state, including business incentive programs.” Gov’t Code § 481.022(2)-(3). The governor’s office also explains it competes on behalf of the state with other states for the expansion and recruitment of businesses by “providing various incentives and employing strategies designed to attract new business to the state or assist with the expansion of an existing business within the state.” Thus, the governor’s office asserts it has specific marketplace interests in the information at issue because it competes on behalf of the state to recruit and expand businesses within the state. The governor’s office argues release of the information at issue would provide a competitive advantage to competing states, as well as companies considering relocation or expansion in the state. Based upon these representations and our review, we find the governor’s office has demonstrated it has specific marketplace interests and may be considered a “competitor” for purposes of section 552.104. We also find the governor’s office has demonstrated release of the information at issue would give advantage to a competitor or bidder. Accordingly, the governor’s office may withhold the information you marked under section 552.104(a) of the Government Code.⁵

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See id.* § 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 that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “to facilitate 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

⁵ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 that a communication involves an attorney for the government does not demonstrate this element. 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: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit 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). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. 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).

The governor’s office states the information you marked consists of communications between governor’s office attorneys, employees, and officials and other privileged parties that were made for the purpose of facilitating the rendition of professional legal services to the governor’s office. Further, the governor’s office states these communications were intended to be, and have remained, confidential. Based upon these representations and our review, we find the governor’s office has demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the governor’s office may withhold the information you marked under section 552.107(1) of the Government Code.⁶

Section 552.111 of the Government Code excepts from disclosure “[a]n 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. This section encompasses the deliberative process privilege. *See Open Records Decision No. 615 at 2* (1993). The purpose of section 552.111 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, writ ref’d n.r.e.); *Open Records Decision No. 538 at 1-2* (1990).

⁶ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

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, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, 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 information 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 severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2002, no pet.); see ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendations 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 third party, including a consultant or other party with a privity of interest. See Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with a party with which governmental body has privity of interest or common deliberative process). 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 *id.*

The governor's office and DPS seek to withhold portions of the remaining information at issue under section 552.111 of the Government Code. The governor's office states the information you marked consists of advice, opinions, and recommendations of governor's office employees and officials and employees of other state agencies with whom the governor's office states it shares a privity of interest regarding policymaking matters. The governor's office further states the information at issue includes draft documents that were intended to be released in their final forms. Based upon these representations and our review of the information at issue, we find the information at issue consists of advice or recommendations on the policymaking matters of the governor's office. Accordingly, the governor's office may withhold the information you marked under section 552.111 of the Government Code.

In summary, with the exception of the information we marked for release, the governor's office must withhold the information you marked under section 552.101 of the Government Code in conjunction with sections 418.176 and 418.177 of the Government Code. The governor's office may withhold the information you marked under section 552.103 of the Government Code. The governor's office may withhold the information you marked under section 552.104 of the Government Code. The governor's office may withhold the information you marked under section 552.107 of the Government Code. The governor's office may withhold the information you marked under section 552.111 of the Government Code. The governor's office must release the remaining information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Paige Lay
Assistant Attorney General
Open Records Division

PL/jxd

Ref: ID# 950403

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

PLAINTIFF'S EXHIBIT G



June 6, 2022

VIA EMAIL

Office of the Governor
Public Information Request
General Counsel Division
P.O. Box 12428
Austin, TX 78711
publicrecords@gov.texas.gov

Re: Public Information Request

Dear Public Records Officer:

Pursuant to the Texas Public Information Act, as codified at Tex. Code ch. 552, American Oversight makes the following request for public records.

Requested Records

American Oversight requests that your office promptly produce the following:

All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) and text messages or messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, Twitter direct messages, Facebook messages, WhatsApp, Signal, Telegram, or Parler) between (a) any of the officials listed below, and (b) any of the external entities listed below or anyone communicating on behalf of any of the entities listed below (including, but not limited to, at the listed email addresses and/or domains).

Office of the Governor Officials:

- i. Governor Greg Abbott, or anyone communicating on his behalf, such as an assistant or scheduler
- ii. Chief of Staff Luis Saenz
- iii. Deputy Chief of Staff Jordan Hale
- iv. Deputy Chief of Staff Gardner Pate
- v. Scheduling Director Michelle Stowers
- vi. Communications Director John Wittman
- vii. Press Secretary/Senior Communications Advisor Ranae Eze

External Entities:

- a. National Rifle Association, NRA Foundation, and NRA's Institute for Legislative Action (nra.org, nrahq.org, nrafoundation.org, and nraila.org)
- b. Charles Cotton



- c. Wayne LaPierre
- d. Jason Ouimet
- e. Texas State Rifle Association (tsra.com)
- f. Gun Owners Foundation of America and Gun Owners Foundation (gunowners.org)
- g. National Association for Gun Rights (nationalgunrights.org)
- h. Second Amendment Foundation (saf.org)
- i. Citizens Committee for the Right to Keep and Bear Arms (ccrkba.org)
- j. American Suppressor Association (americansuppressorsassociation.com)
- k. National Shooting Sports Foundation (nssf.org)
- l. National Shooting Sports Foundation Political Action Committee (nssfpac.com)

Please provide all responsive records from May 24, 2022, through June 3, 2022.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the term “record” in its broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

In addition, American Oversight insists that your office use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; governmental authorities may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Please search all records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting government business sent or received on the personal account of a governmental authority’s officer or employee constitutes a record for purposes of the Texas Public Information Act.¹

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to

¹ Tex. Code § 552.002(a-2); *see also Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).

make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your office can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with Tex. Code § 552.267(a), American Oversight requests a waiver of fees associated with processing this request for records, because such a waiver “is in the public interest because providing the copy of the information primarily benefits the general public.” The requested records are directly related to the work of state officials, with the potential to shed light on the nature of communications between Governor Abbott and pro-gun advocacy organizations in the days following the shooting at Robb Elementary school in Uvalde, Texas. This matter is a subject of substantial public interest in Texas.² Accordingly, release of records that may help the public understand the operations and activities of state officials is in the public interest.

Release of the requested records will primarily benefit the public.³ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the requested records is not in American Oversight’s financial interest, but is rather in the public interest. American Oversight is committed to transparency and makes the responses governmental authorities provide to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the public would benefit from an enhanced understanding of the government’s activities

² See Andrew Zhang, *Greg Abbott, Dan Patrick Cancel In-Person NRA Convention Appearances in Wake of Uvalde Mass Shooting*, Texas Trib., Updated May 27, 2022, <https://www.texastribune.org/2022/05/26/greg-abbott-nra-uvalde/>.

³ Tex. Code § 552.267(a).

through American Oversight's analysis and publication of these records. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁴

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁵ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization's investigations into misconduct and corruption in state governments;⁶ the posting of records related to the Trump Administration's contacts with Ukraine and analyses of those contacts;⁷ posting records and editorial content about the federal government's response to the Coronavirus pandemic;⁸ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁹ the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;¹⁰ and posting records and analysis of federal officials' use of

⁴ American Oversight currently has approximately 16,000 followers on Facebook and 117,400 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited May 31, 2022); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited May 31, 2022).

⁵ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁶ *State Investigations*, American Oversight, <https://www.americanoversight.org/states>.

⁷ *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

⁸ See generally *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; see, e.g., *CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

⁹ See generally *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹⁰ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹¹

Accordingly, American Oversight qualifies for a fee waiver. If your office denies our request for a fee waiver, please notify American Oversight of any anticipated fees or costs in excess of \$40 prior to incurring such costs or fees.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your county on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Emma Lewis at records@americanoversight.org or (202) 919-6303. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Emma Lewis

Emma Lewis
on behalf of
American Oversight

¹¹ See generally *Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; see, e.g., *New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

PLAINTIFF'S EXHIBIT H

Subject: PIR 325-22 Pintado
Date: Monday, June 20, 2022 at 4:52:48 PM Eastern Daylight Time
From: Public Records
To: 'records@americanoversight.org'
Attachments: TX-GOV-22-0548.pdf

EXTERNAL SENDER

June 20, 2022

Ms. Mariuxi Pintado
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
records@americanoversight.org
VIA EMAIL ONLY

RE: OOG PIR # 325-22

Dear Ms. Pintado:

This email is in response to your public information request to the Office of the Governor (“OOG”), received by the OOG on June 6, 2022. A copy of your request is attached to this email.

The OOG has reviewed its files and has no information responsive to your request.

If you have any questions, please contact me at publicrecords@gov.texas.gov.

Sincerely,

Open Records
Office of Governor Greg Abbott

From: AO Records <records@americanoversight.org>
Sent: Monday, June 6, 2022 2:41 PM
To: Public Records <publicrecords@gov.texas.gov>
Subject: 325-22 Pintado - Request for Information

[**WARNING**] - The sender of this email could not be validated, and may not match the display name.

[**EXTERNAL SENDER**] - Do not click on links or open attachments in unexpected messages.

Dear Public Records Officer:

Please find attached a request for records under Texas public records laws.

Sincerely,

Mariuxi Pintado
Paralegal
American Oversight
records@americanoversight.org
www.americanoversight.org | @weareoversight

Public Information Request: TX-GOV-22-0548

PLAINTIFF'S EXHIBIT I



March 25, 2021

VIA EMAIL

Lauren Downey
Public Information Coordinator
Office of the Attorney General
PO Box 12548
Austin, TX 78711
publicrecords@texasattorneygeneral.gov

Re: Public Information Request

Dear Ms. Downey,

Pursuant to the Texas Public Information Act, as codified at Tex. Code ch. 552, American Oversight makes the following request for public records.

Requested Records

American Oversight requests that the Office of the Attorney General promptly produce the following:

All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) sent by Attorney General Ken Paxton or Solicitor General Judd Stone from January 6, 2021 through January 8, 2021.

In an effort to accommodate the Texas Attorney General's Office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by Attorney General Paxton and Solicitor General Stone. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both Paxton or Stone's response to an email from and the initial received message are responsive to this request and should be produced.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the term "record" in its broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these



records. **No category of material should be omitted from search, collection, and production.**

In addition, American Oversight insists that your office use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; governmental authorities may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Please search all records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting government business sent or received on the personal account of a governmental authority's officer or employee constitutes a record for purposes of the Texas Public Information Act.¹

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your office can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

¹ Tex. Code § 552.002(a-2); *see also Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).

Fee Waiver Request

In accordance with Tex. Code § 552.267(a), American Oversight requests a waiver of fees associated with processing this request for records because such a waiver “is in the public interest because providing the copy of the information primarily benefits the general public.” The requested records are directly related to the work of state officials, with the potential to shed light on how Attorney General Paxton and Solicitor General Stone spend their time during their tenure and their communications during and immediately following the events of January 6, 2021 at the U.S. Capitol. These matters are a subject of substantial public interest in Texas. Accordingly, release of records that may help the public understand the operations and activities of state officials is in the public interest.

Release of the requested records will primarily benefit the public.² As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the requested records is not in American Oversight’s financial interest, but is rather in the public interest. American Oversight is committed to transparency and makes the responses governmental authorities provide to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the public would benefit from an enhanced understanding of the government’s activities through American Oversight’s analysis and publication of these records. American Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.³

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁴ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization’s investigations into misconduct and corruption in state governments;⁵ the posting of records related to the Trump Administration’s contacts with Ukraine and analyses of those contacts;⁶ posting records and editorial content

² Tex. Code § 552.267(a).

³ American Oversight currently has approximately 15,700 followers on Facebook and 106,100 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Mar. 16, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Mar. 16, 2021).

⁴ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁵ *State Investigations*, American Oversight, <https://www.americanoversight.org/states>.

⁶ *Trump Administration’s Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

about the federal government's response to the Coronavirus pandemic;⁷ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁸ the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;⁹ and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹⁰

Accordingly, American Oversight qualifies for a fee waiver. If your office denies our request for a fee waiver, please notify American Oversight of any anticipated fees or costs in excess of \$40 prior to incurring such costs or fees.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your county on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Emma Lewis at records@americanoversight.org or (202) 919-6303. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

⁷ See generally *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; see, e.g., *CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

⁸ See generally *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

⁹ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹⁰ See generally *Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; see, e.g., *New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

/s/ Emma Lewis

Emma Lewis
on behalf of
American Oversight

PLAINTIFF'S EXHIBIT J

Subject: [Records Center] Public Information Request :: R008746-032521
Date: Thursday, April 1, 2021 at 2:44:01 PM Eastern Daylight Time
From: TEXAS AG Public Information
To: records@americanoversight.org

EXTERNAL SENDER

Attachments:

[Lewis_\(R008746\)_15_day.pdf](#)

[Memo_Style_Redacted.pdf](#)

[Memo_Style_2_Redacted.pdf](#)

--- Please respond above this line ---

April 1, 2021

Ms. Emma Lewis
American Oversight
records@americanoversight.org
VIA E-MAIL ONLY

Re: Public Information Request No. R008746

Dear Ms. Lewis:

This e-mail is in response to your public information request to the Office of the Attorney General ("OAG"), received by the OAG on March 25, 2021.

The OAG has reviewed its files and has located the attached documents that are responsive to your request. Although the Public Information Act allows a governmental body to charge for copying documents, the attached documents are being provided to you at no charge.

The OAG believes the remaining information responsive to your request is excepted from required public disclosure. We have requested a ruling on this information from the Open Records Division of the OAG. A copy of our brief to the Open Records Division is attached.

If you have any questions, please contact publicrecords@oag.texas.gov.

Sincerely,

Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General

To monitor the progress or update this request please log into the [Public Records Center](#)



From: Stone, Judd <Judd.Stone@oag.texas.gov>
Sent: Thursday, January 7, 2021 10:09 AM
To: Monica Washington <Monica_R_Washington@ca5.uscourts.gov>
Subject: Re: 20-70010 - Prible v. Lumpkin - Unopposed Level 1 Extension Request

CAUTION - EXTERNAL:

We will not, then. We have found out it is opposed, though. So should we change that in the title?

From: Monica Washington <Monica_R_Washington@ca5.uscourts.gov>
Sent: Thursday, January 7, 2021 9:26 AM

To: Stone, Judd <Judd.Stone@oag.texas.gov>

Subject: RE: 20-70010 - Prible v. Lumpkin - Unopposed Level 1 Extension Request

Do not change the title of the motion. Do not add "Corrected" to the motion title.

Respectfully,
Monica R. Washington
Death Penalty/Pro Se Clerk



U.S. 5th Circuit Court of Appeals
504.310.7705

From: Stone, Judd <Judd.Stone@oag.texas.gov>

Sent: Thursday, January 7, 2021 9:24 AM

To: Monica Washington <Monica_R_Washington@ca5.uscourts.gov>

Subject: Re: 20-70010 - Prible v. Lumpkin - Unopposed Level 1 Extension Request

CAUTION - EXTERNAL:

Thank you. I am grateful for your assistance. We will file a corrected motion today.

From: Monica Washington <Monica_R_Washington@ca5.uscourts.gov>

Sent: Thursday, January 7, 2021 7:37 AM

To: Stone, Judd <Judd.Stone@oag.texas.gov>

Subject: RE: 20-70010 - Prible v. Lumpkin - Unopposed Level 1 Extension Request

Dear Mr. Stone,

The motion has been removed from the docket.

Respectfully,
Monica R. Washington
Death Penalty/Pro Se Clerk



U.S. 5th Circuit Court of Appeals
504.310.7705

From: Stone, Judd <Judd.Stone@oag.texas.gov>

Sent: Wednesday, January 6, 2021 5:29 PM

To: Monica Washington <Monica_R_Washington@ca5.uscourts.gov>

Subject: Re: 20-70010 - Prible v. Lumpkin - Unopposed Level 1 Extension Request

CAUTION - EXTERNAL:

Dear Ms. Washington,

I made an error in this motion and will have to re-submit it as an opposed motion. I have notified opposing counsel and would like to withdraw it. I will file a corrected motion tomorrow. My sincere apologies.

Yours,

Judd Stone

From: Monica Washington <Monica_R_Washington@ca5.uscourts.gov>
Sent: Wednesday, January 6, 2021 4:07 PM
To: Stone, Judd <Judd.Stone@oag.texas.gov>
Subject: 20-70010 - Prible v. Lumpkin - Unopposed Level 1 Extension Request

Dear Mr. Stone,

We are in receipt of the Unopposed Level 1 Extension Request. Unfortunately, can you refile the document as a motion filed on behalf of the party and upload the motion.

Once the document is filed as a motion filed on behalf of the party with your permission, we will remove the Unopposed Level 1 Extension Request.

Respectfully,
Monica R. Washington
Death Penalty/Pro Se Clerk



Monica R. Washington
U.S. 5th Circuit Court of Appeals
504.310.7705

CAUTION - EXTERNAL EMAIL: This email originated outside the Judiciary. Exercise caution when opening attachments or clicking on links.

CAUTION - EXTERNAL EMAIL: This email originated outside the Judiciary. Exercise caution when opening attachments or clicking on links.

CAUTION - EXTERNAL EMAIL: This email originated outside the Judiciary. Exercise caution when opening attachments or clicking on links.

From: Stone, Judd <Judd.Stone@oag.texas.gov>
Sent: Thursday, January 7, 2021 11:42 AM
To: Hertel, Cecilia <Cecilia.Hertel@oag.texas.gov>
Subject: Re: FYI ...

Excellent. Thanks!

From: Hertel, Cecilia <Cecilia.Hertel@oag.texas.gov>
Sent: Thursday, January 7, 2021 11:32 AM
To: Stone, Judd <Judd.Stone@oag.texas.gov>
Subject: RE: FYI ...

E-filed

From: Stone, Judd <Judd.Stone@oag.texas.gov>
Sent: Thursday, January 7, 2021 11:24 AM
To: Hertel, Cecilia <Cecilia.Hertel@oag.texas.gov>
Subject: Re: FYI ...

Yes. Let's file now. Thank you!

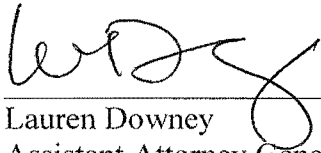
From: Hertel, Cecilia <Cecilia.Hertel@oag.texas.gov>
Sent: Thursday, January 7, 2021 11:13 AM
To: Stone, Judd <Judd.Stone@oag.texas.gov>
Subject: FYI ...

Judd,

I have to leave shortly (in 45 min.) to go into the office. I'll be away from my computer for several hours. I was hoping to get the Grassroots brief e-filed before I left. Is that possible?

PLAINTIFF'S EXHIBIT K

Pursuant to section 552.308(b), this is to confirm the brief at issue was timely placed in intra-agency mail addressed to the Open Records Division on April 1, 2021.

A handwritten signature in black ink, appearing to read 'LD', is written over a horizontal line.

Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2021

Justin Gordon
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Public Information Request No. R008746

Dear Mr. Gordon:

On March 25, 2020, the Office of the Attorney General ("OAG") received a public information request under the Public Information Act ("PIA"), Chapter 552, Government Code, from Ms. Emma Lewis. A copy of the request is attached as Exhibit A.

The OAG will release some of the requested information. The OAG asserts the remaining responsive information is excepted from required public disclosure under the PIA. Pursuant to sections 552.301(b) and 552.301(e) of the Government Code, the OAG submits this brief to seek a decision as to whether section 552.107 of the Government Code applies to the information at issue. We have copied the requestor as a recipient of this brief pursuant to sections 552.301(d) and 552.301(e-1) of the Government Code. A representative sample of the information at issue is attached as Exhibit B.

**I. Information Excepted From Required Public Disclosure Under Section 552.107:
Privileged Attorney-Client Communications**

Section 552.107(1) of the Government Code excepts from required public disclosure information "that the attorney general . . . is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct." Gov't Code § 552.107. Section 552.107 protects information that falls within the attorney-client privilege. 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 that 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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *Id.* 503(b)(1)(A), (B), (C), (D), (E). Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), 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).

Section 552.107(1) applies to communications between a governmental body and its attorney made in confidence to further the attorney's rendering of professional legal services to the governmental body. Attorney General opinions applying section 552.107(1) have permitted governmental bodies to withhold information their attorneys have received or generated in the capacity of a legal advisor. *See* Open Records Decision No. 462 at 10-11 (1987) (applying section 3(a)(7), predecessor to Section 552.107(1)).


The communications at issue are between OAG attorneys and staff discussing legal matters of the OAG. The communications were not intended to be disclosed and have not been disclosed to non-privileged parties. *See* Tex. R. Evid. 503(a)(5). Because the information reveals confidential communications between privileged parties that were made for the purpose of providing professional legal services to the State, the OAG contends the information at issue may be withheld under section 552.107(1) of the Government Code.

II. Conclusion

The OAG respectfully requests a decision from the Open Records Division regarding the applicability of the argued exception as provided by the PIA.

Please do not hesitate to contact me at (512) 475-4213 if you have questions or require additional information.

Sincerely,



Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General

c: Ms. Emma Lewis
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
(without enclosures)

PLAINTIFF'S EXHIBIT L



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 7, 2021

Ms. Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2021-14827

Dear Ms. Downey:

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# 886619 (PIR# R008746).

The Office of the Attorney General (the "OAG") received a request for e-mail communications sent by the Attorney General or Solicitor General during a specified time period, including any original e-mails to which responsive e-mails respond. The OAG states it will release some of the requested information. The OAG claims the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹

Initially, we note the OAG marked some information as not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the OAG is not required to release non-responsive information in response to the request.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Gov't Code § 552.107(1). When asserting the attorney-client

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 that those records contain substantially different types of information than that submitted to this office.

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 that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “to facilitate 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.⁴ Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. 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: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit 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). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. 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).

The OAG states the responsive information consists of communications between OAG attorneys and staff discussing legal matters of the OAG that were made for the purpose of rendering professional legal services to the State. The OAG states these communications were intended to be, and have remained, confidential. Based on these representations and our review, we find the OAG has demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the OAG may withhold the responsive information under section 552.107(1).

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

Ms. Lauren Downey - Page 3

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/gw

Ref: ID# 886619

Enc. Submitted documents

c: Requestor
(w/o enclosures)

PLAINTIFF'S EXHIBIT M



August 6, 2021

VIA EMAIL

Office of the Attorney General
Public Information Coordinator's Office – Mail Code 070
P.O. Box 12039
Austin, TX 78711
publicrecords@oag.texas.gov

Re: Public Information Request

Dear Public Information Officer:

Pursuant to the Texas Public Information Act, as codified at Tex. Code ch. 552, American Oversight makes the following request for public records.

Requested Records

American Oversight requests that the Office of the Attorney General promptly produce the following:

1. All records reflecting email communications (including any email attachments) between (a) anyone serving as Chief of Staff or First Assistant Attorney General and (b) any non-governmental email address attributed to Attorney General Ken Paxton.
2. All emails sent from (a) any non-governmental email address attributed to Attorney General Paxton to (b) any governmental email address associated with Attorney General Paxton. Please include all messages, including those that have been forwarded to Attorney General Paxton's governmental email address or on which Attorney General Paxton's governmental email address is carbon copied or blind carbon copied.

Please provide all responsive records from April 1, 2020, through the date the search is conducted.

Please search all records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting government business sent or received on the personal account of a governmental authority's officer or employee constitutes a record for purposes of the Texas Public Information Act.¹

¹ Tex. Code § 552.002(a-2); *see also Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).



American Oversight insists that your office use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; governmental authorities may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your office can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with Tex. Code § 552.267(a), American Oversight requests a waiver of fees associated with processing this request for records, because such a waiver “is in the public interest because providing the copy of the information primarily benefits the general public.” The requested records are directly related to the work of state officials, with the potential to shed light on work-related communications Attorney General Paxton may be having on his personal communication accounts. This matter is a subject

of substantial public interest in Texas.² Accordingly, release of records that may help the public understand the operations and activities of state officials is in the public interest.

Release of the requested records will primarily benefit the public.³ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the requested records is not in American Oversight's financial interest, but is rather in the public interest. American Oversight is committed to transparency and makes the responses governmental authorities provide to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the public would benefit from an enhanced understanding of the government's activities through American Oversight's analysis and publication of these records. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁴

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁵ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization's investigations into misconduct and corruption in state governments;⁶ the posting of records related to the Trump Administration's contacts with Ukraine and analyses of those contacts;⁷ posting records and editorial content about the federal government's response to the Coronavirus pandemic;⁸ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze

² See e.g., John Tedesco et al., *Ken Paxton Refuses to Release Messages About Attendance at Pro-Trump Rally Before Jan. 6 Insurrection*, Texas Trib. (Mar. 25, 2021, 6:00 AM), <https://www.texastribune.org/2021/03/25/texas-ken-paxton-trump-insurrection/>.

³ Tex. Code § 552.267(a).

⁴ American Oversight currently has approximately 15,700 followers on Facebook and 107,400 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Aug. 5, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Aug. 5, 2021).

⁵ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁶ *State Investigations*, American Oversight, <https://www.americanoversight.org/states>.

⁷ *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

⁸ See generally *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; see, e.g., *CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁹ the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;¹⁰ and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹¹

Accordingly, American Oversight qualifies for a fee waiver. If your office denies our request for a fee waiver, please notify American Oversight of any anticipated fees or costs in excess of \$40 prior to incurring such costs or fees.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your county on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Emma Lewis at records@americanoversight.org or (202) 919-6303. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Emma Lewis

Emma Lewis
on behalf of
American Oversight

⁹ See generally *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹⁰ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹¹ See generally *Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; see, e.g., *New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

PLAINTIFF'S EXHIBIT N

Subject: [Records Center] Public Information Request :: R009976-080621
Date: Thursday, August 19, 2021 at 5:45:00 PM Eastern Daylight Time
From: TEXAS AG Public Information
To: records@americanoversight.org

EXTERNAL SENDER

Attachments:

[Lewis_\(R009976\)_15_day.pdf](#)

--- Please respond above this line ---

August 19, 2021

Ms. Emma Lewis
American Oversight
records@americanoversight.org
VIA E-MAIL ONLY

Re: Public Information Request No. R009976

Dear Ms. Lewis:

This e-mail is in response to your public information request to the Office of the Attorney General ("OAG"), received by the OAG on August 6, 2021.

The OAG believes the information responsive to your request is excepted from required public disclosure. We have requested a ruling on this information from the Open Records Division of the OAG. A copy of our brief to the Open Records Division is attached.

If you have any questions, please contact publicrecords@oag.texas.gov.

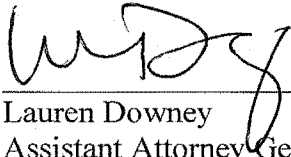
Sincerely,

Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General

To monitor the progress or update this request please log into the [Public Records Center](#)



Pursuant to section 552.308(b), this is to confirm the brief at issue was timely placed in intra-agency mail addressed to the Open Records Division on August 19, 2021.

A handwritten signature in black ink, appearing to read 'LD', is written over a horizontal line.

Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2021

Justin Gordon
Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Public Information Request No. R009976

Dear Mr. Gordon:

On August 6, 2021, the Office of the Attorney General ("OAG") received a public information request under the Public Information Act ("PIA"), Chapter 552, Government Code, from Ms. Emma Lewis. A copy of the request is attached as Exhibit A.

The OAG asserts the responsive information is excepted from required public disclosure under the PIA. Pursuant to sections 552.301(b) and 552.301(e) of the Government Code, the OAG submits this brief to seek a decision as to whether section 552.107 of the Government Code applies to the information at issue. We have copied the requestor as a recipient of this brief pursuant to sections 552.301(d) and 552.301(e-1) of the Government Code. A representative sample of the information at issue is attached as Exhibit B.

**I. Information Excepted From Required Public Disclosure Under Section 552.107:
Privileged Attorney-Client Communications**

Section 552.107(1) of the Government Code excepts from required public disclosure information "that the attorney general . . . is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct." Gov't Code § 552.107. Section 552.107 protects information that falls within the attorney-client privilege. 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 that 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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *Id.* 503(b)(1)(A), (B), (C), (D), (E). Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), 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).

Section 552.107(1) applies to communications between a governmental body and its attorney made in confidence to further the attorney's rendering of professional legal services to the governmental body. Attorney General opinions applying section 552.107(1) have permitted governmental bodies to withhold information their attorneys have received or generated in the capacity of a legal advisor. *See* Open Records Decision No. 462 at 10-11 (1987) (applying section 3(a)(7), predecessor to Section 552.107(1)).

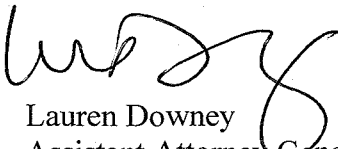
The communications at issue are between the Attorney General and his Chief of Staff discussing legal matters of the OAG. The communications were not intended to be disclosed and have not been disclosed to non-privileged parties. *See* Tex. R. Evid. 503(a)(5). Because the information reveals confidential communications between privileged parties that were made for the purpose of providing professional legal services to the State, the OAG contends the information at issue may be withheld under section 552.107(1) of the Government Code.

II. Conclusion

The OAG respectfully requests a decision from the Open Records Division regarding the applicability of the argued exception as provided by the PIA.

Please do not hesitate to contact me at (512) 475-4213 if you have questions or require additional information.

Sincerely,



Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General

c: Ms. Emma Lewis
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
(without enclosures)

PLAINTIFF'S EXHIBIT O

Subject: RE: Open Records Division Ruling for R009976-080621
Date: Thursday, December 2, 2021 at 1:41:31 PM Eastern Standard Time
From: publicrecords
To: AO Records
Attachments: OR2021-29515.pdf

EXTERNAL SENDER

Please see attached.

Sincerely,

Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General

From: AO Records <records@americanoversight.org>
Sent: Thursday, December 2, 2021 11:04 AM
To: publicrecords <PublicRecords@oag.texas.gov>
Subject: Open Records Division Ruling for R009976-080621

Good morning,

We received a letter in the mail dated October 26 from the Open Records Division of the Attorney General's office with the Open Records Ruling for #R009976-080621. Would it be possible for your office to send us another copy of that letter, either by mail or email? Unfortunately, in our mail intake process we lost the second page of the letter.

Thank you for your help, and our sincere apologies for the inconvenience.

Best,

--

Sarah Wishingrad
Pronouns: she/her
Paralegal
American Oversight
records@americanoversight.org
www.americanoversight.org | @weareoversight



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 26, 2021

Ms. Lauren Downey
Public Information Coordinator
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2021-29515

Dear Ms. Downey:

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# 912505 (PIR# R009976).

The Office of the Attorney General (the "OAG") received a request for (1) certain communications between anyone serving as Chief of Staff or First Assistant Attorney General and any non-governmental e-mail address attributed to the Attorney General during a stated time period and (2) certain communications sent from any non-governmental e-mail address attributed to the Attorney General to any governmental e-mail address attributed to the Attorney General during a stated time period. The OAG claims the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Gov't Code § 552.107(1). When asserting the attorney-client

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 that those records contain substantially different types of information than that submitted to this office.

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. See 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 “to facilitate 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 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 that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. 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: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit 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. See *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. 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).

The OAG states the submitted information consists of communications between the Attorney General and his Chief of Staff discussing legal matters of the OAG that were made for the purpose of providing professional legal services to the State. The OAG also states the communications were not intended to be disclosed and have not been disclosed to non-privileged parties. Based upon these representations and our review, we find the OAG has demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the OAG may withhold the submitted information under section 552.107(1) of the Government Code.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jm

Ref: ID# 912505

Enc. Submitted documents

c: Requestor
(w/o enclosures)

PLAINTIFF'S EXHIBIT P



May 2, 2022

VIA EMAIL

Office of the Attorney General
Public Information Coordinator's Office – Mail Code 070
P.O. Box 12039
Austin, TX 78711
publicrecords@oag.texas.gov

Re: Public Information Request

Dear Public Information Officer:

Pursuant to the Texas Public Information Act, as codified at Tex. Code ch. 552, American Oversight makes the following request for public records.

Requested Records

American Oversight requests that your office promptly produce the following:

All text messages or messages on messaging applications similar in form to text messages (such as Signal, WhatsApp, Facebook Messenger, Twitter direct messages, etc.) pertaining to official business sent or received by Attorney General Ken Paxton.

Please understand messages regarding “official business” to broadly include, at a minimum, all communications that would ordinarily comprise public information per Tex. Gov’t Code §§ 552.002(a)(3) and 552.002(a-1), on both government-issued and personal devices.

Please provide all responsive records from November 3, 2020, through the date the search is conducted.

American Oversight insists that your office use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; governmental authorities may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Please search all records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting government business sent or received on the personal



account of a governmental authority's officer or employee constitutes a record for purposes of the Texas Public Information Act.¹

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your office can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with Tex. Code § 552.267(a), American Oversight requests a waiver of fees associated with processing this request for records, because such a waiver “is in the public interest because providing the copy of the information primarily benefits the general public.” The requested records are directly related to the work of state officials, with the potential to shed light on communications Attorney General Paxton may be having over text or similar messages about government business, given recent reporting about texts that Paxton's office have not previously released. This matter is a subject of substantial public interest in Texas.² Accordingly, release of records that may

¹ Tex. Code § 552.002(a-2); *see also Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).

² *See, e.g., John Tedesco, et al., Ken Paxton Refuses to Release Emails, Texts Sent at Trump Rally That Devolved into U.S. Capitol Riot*, Austin-American Statesman (Mar. 26, 2021, 3:45 PM), <https://www.statesman.com/story/news/2021/03/25/texas-ag-ken-paxton-refuses-release-messages-emails-texts-trump-rally-capitol-riot/6989141002/>.

help the public understand the operations and activities of state officials is in the public interest.

Release of the requested records will primarily benefit the public.³ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the requested records is not in American Oversight's financial interest, but is rather in the public interest. American Oversight is committed to transparency and makes the responses governmental authorities provide to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the public would benefit from an enhanced understanding of the government's activities through American Oversight's analysis and publication of these records. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁴

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁵ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization's investigations into misconduct and corruption in state governments;⁶ the posting of records related to the Trump Administration's contacts with Ukraine and analyses of those contacts;⁷ posting records and editorial content about the federal government's response to the Coronavirus pandemic;⁸ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁹ the posting of records

³ Tex. Code § 552.267(a).

⁴ American Oversight currently has approximately 15,700 followers on Facebook and 118,100 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Apr. 19, 2022), American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Apr. 19, 2022).

⁵ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁶ *State Investigations*, American Oversight, <https://www.americanoversight.org/states>.

⁷ *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

⁸ *See generally The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; *see, e.g., CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

⁹ *See generally Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; *see, e.g., Border Wall*

related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;¹⁰ and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹¹

Accordingly, American Oversight qualifies for a fee waiver. If your office denies our request for a fee waiver, please notify American Oversight of any anticipated fees or costs in excess of \$40 prior to incurring such costs or fees.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your county on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Emma Lewis at records@americanoversight.org or (202) 919-6303. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Emma Lewis
Emma Lewis
on behalf of
American Oversight

Investigation Report: No Plans, No Funding, No Timeline, No Wall, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹⁰ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹¹ *See generally Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; *see, e.g., New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

PLAINTIFF'S EXHIBIT Q

Subject: [Records Center] Public Information Request :: R012488-050222

Date: Thursday, May 5, 2022 at 10:24:01 AM Eastern Daylight Time

From: TEXAS AG Public Information

To: records@americanoversight.org

EXTERNAL SENDER

Attachments:

[Lewis_R012488_15_day.pdf](#)

[Text_messages.pdf](#)

[Text_Messages_2.pdf](#)

--- Please respond above this line ---

May 5, 2022

Ms. Emma Lewis
American Oversight
records@americanoversight.org
VIA E-MAIL ONLY

Re: Public Information Request No. R012488

Dear Ms. Lewis:

This e-mail is in response to your public information request to the Office of the Attorney General ("OAG"), received by the OAG on May 2, 2022.

The OAG has reviewed its files and has located the attached documents that are responsive to your request. Although the Public Information Act allows a governmental body to charge for providing documents in certain circumstances, the attached documents are being provided to you at no charge.

Some of the information you have requested was previously requested from our office by other individuals. As the records were privileged, our office sought to withhold the information by submitting requests for open records letter rulings to the Open Records Division. In response to our requests for rulings, the Open Records Division issued Open Records Letter Nos. 2021-11264 (2021) and 2021-09095 (2021). As the law, facts, and circumstances on which the prior rulings were based have not changed, the OAG will continue to rely on the

rulings as previous determinations and withhold the information at issue. See Open Records Decision No. 673 at 6-7 (2001).

The OAG believes the remaining information responsive to your request is excepted from required public disclosure. We have requested a ruling on this information from the Open Records Division of the OAG. A copy of our brief to the Open Records Division is attached.

If you have any questions, please contact publicrecords@oag.texas.gov.

Sincerely,

Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General

To monitor the progress or update this request please log into the [Public Records Center](#)



Friday 12:51 PM



audio



FaceTime



info

Friday 12:51 PM

AG Paxton, we can accommodate 5pm VlrTra. Will Fowlke will be your host.

The address for the Murray office is: 5272 South College Drive, Murray

Will Fowlke will meet you in the foyer. Enter through south entrance.

Dinner: Market Street Grill, Oyster Bar, 2985 E Cottonwood Pkwy, SLC

AG Ken Paxton

AP

Thank you. How should be dress for the simulation?

Sean Reyes

SR

Dress casual for both. Jeans and polo. Comfortable for simulator. And dinner.

Subject



Dinner: Market Street Grill, Oyster Bar, 2985 E Cottonwood Pkwy, SLC

AG Ken Paxton

AP

Thank you. How should be dress for the simulation?

Sean Reyes

SR

Dress casual for both. Jeans and polo. Comfortable for simulator. And dinner.

AG Ken Paxton

AP

Excellent! So looking forward to this.

Friday 1:55 PM

Sean Reyes

SR

And Lee said she arranged something for tonight so Gen Paxton can do his interview.

AG Ken Paxton

AP

She did! Thank you

10:47



Luis J >

iMessage

Mon, Jan 17, 8:17 AM



**2022 Is Off to a Bad Start,
Courtesy of the Court of
Criminal Appeals**

townhall.com

Delivered



iMessage



10:46



Giovanni >

iMessage

Mon, Jan 17, 8:14 AM



**2022 Is Off to a Bad Start,
Courtesy of the Court of
Criminal Appeals**

townhall.com

Great seeing you
yesterday. This just came
out

Delivered



iMessage



10:44



Pete >

iMessage

Mon, Jan 17, 8:11 AM



**2022 Is Off to a Bad Start,
Courtesy of the Court of
Criminal Appeals**

townhall.com

Read 1/17/22



iMessage



10:42



Dan >

Mon, Jan 17, 8:10 AM



**2022 Is Off to a Bad Start,
Courtesy of the Court of
Criminal Appeals**

townhall.com

Delivered



iMessage



PLAINTIFF'S EXHIBIT R

Subject: [Records Center] Public Information Request :: R012488-050222
Date: Thursday, May 5, 2022 at 10:24:01 AM Eastern Daylight Time
From: TEXAS AG Public Information
To: records@americanoversight.org

EXTERNAL SENDER

Attachments:

[Lewis_R012488_15_day.pdf](#)

[Text_messages.pdf](#)

[Text_Messages_2.pdf](#)

--- Please respond above this line ---

May 5, 2022

Ms. Emma Lewis
American Oversight
records@americanoversight.org
VIA E-MAIL ONLY

Re: Public Information Request No. R012488

Dear Ms. Lewis:

This e-mail is in response to your public information request to the Office of the Attorney General ("OAG"), received by the OAG on May 2, 2022.

The OAG has reviewed its files and has located the attached documents that are responsive to your request. Although the Public Information Act allows a governmental body to charge for providing documents in certain circumstances, the attached documents are being provided to you at no charge.

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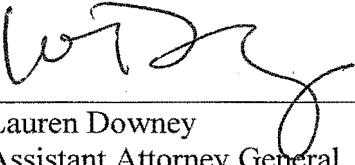
Sincerely,

Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General

To monitor the progress or update this request please log into the [Public Records Center](#)



Pursuant to section 552.308(b), this is to confirm the brief at issue was timely placed in intra-agency mail addressed to the Open Records Division on May 5, 2022.

A handwritten signature in black ink, appearing to read 'L. Downey', is written over a horizontal line.

Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2022

Mr. Justin Gordon
Open Records Division
Office of the Attorney General
P. O. Box 12548
Austin, TX 78711-2548

Re: Public Information Request No. R012488

Dear Mr. Gordon:

On May 2, 2022, the Office of the Attorney General ("OAG") received a written request under the Public Information Act ("PIA"), Chapter 552, Government Code, from Ms. Emma Lewis. A copy of the request is attached as Exhibit A.

The OAG will release some responsive information. Some of the responsive communications were the subject of prior requests for rulings, in response to which the Open Records Division issued Open Records Letter Nos. 2021-11264 (2021) and 2021-09095 (2021). As the law, facts, and circumstances on which the prior rulings were based have not changed, the OAG will continue to rely on the rulings as previous determinations. *See* Open Records Decision No. 673 at 6-7 (2001). The OAG asserts the remaining information responsive to the request is excepted from required disclosure under the PIA. Pursuant to sections 552.301(b) and 552.301(e) of the Government Code, the OAG submits this brief to seek a decision as to whether section 552.107 of the Government Code applies to the information at issue. We have copied the requestor as a recipient of this brief pursuant to sections 552.301(d) and 552.301(e-1) of the Government Code. A representative sample of the information at issue is attached as Exhibit B.

I. Information Excepted From Required Public Disclosure Under Section 552.107: Privileged Attorney-Client Communications

Section 552.107(1) of the Government Code excepts from required public disclosure information "that the attorney general . . . is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct." Gov't Code § 552.107. Section 552.107 protects information that falls within the attorney-client privilege. 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 that 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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *Id.* 503(b)(1)(A), (B), (C), (D), (E). Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), 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).

Section 552.107(1) applies to communications between a governmental body and its attorney made in confidence to further the attorney's rendering of professional legal services to the governmental body. Attorney General opinions applying section 552.107(1) have permitted governmental bodies to withhold information their attorneys have received or generated in the capacity of a legal advisor. See Open Records Decision No. 462 at 10-11 (1987) (applying section 3(a)(7), predecessor to Section 552.107(1)).

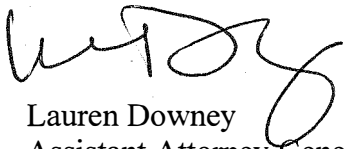
The information at issue consists of communications between the OAG's Executive Administration and the Attorney General discussing matters involving the OAG. These communications were not intended to be disclosed and have not been disclosed to non-privileged parties. See Tex. R. Evid. 503(a)(5). Because this information consists of confidential communications between privileged parties that were made for the purpose of providing professional legal services to the State of Texas, the OAG contends the information at issue may be withheld in its entirety under section 552.107(1) of the Government Code.

II. Conclusion

The OAG respectfully requests a decision from the Open Records Division regarding the applicability of the argued exception as provided by the PIA.

Should you need additional information, please feel free to contact me at (512) 475-4213 or publicrecords@oag.texas.gov.

Sincerely,



Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General

cc: Ms. Emma Lewis
American Oversight
1030 15th St. NW, Suite B255
Washington, DC 20005
(without enclosures)

PLAINTIFF'S EXHIBIT S



June 7, 2022

VIA EMAIL

Office of the Attorney General
Public Information Coordinator's Office – Mail Code 070
PO Box 12039
Austin, TX 78711
publicrecords@oag.texas.gov

Re: Public Information Request

Dear Public Records Officer:

Pursuant to the Texas Public Information Act, as codified at Tex. Code ch. 552, American Oversight makes the following request for public records.

Requested Records

American Oversight requests that your office promptly produce the following:

All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) and text messages or messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, Twitter direct messages, Facebook messages, WhatsApp, Signal, Telegram, or Parler) between (a) any of the officials listed below, and (b) any of the external entities listed below or anyone communicating on behalf of any of the entities listed below (including, but not limited to, at the listed email addresses and/or domains).

Officials:

- i. Ken Paxton, Attorney General, or anyone communicating on his behalf, such as an assistant or scheduler
- ii. Brent Webster, First Assistant Attorney General
- iii. Grant Dortman, Deputy First Assistant Attorney General
- iv. Lesley French, Chief of Staff
- v. Aaron Reitz, Deputy Attorney General of Legal Strategy
- vi. Alejandro Garcia, Director of Communications
- vii. Judd Stone, Solicitor General, or anyone communicating on his behalf, such as an assistant or scheduler
- viii. Tom Taylor, Director of Administration

External Entities:

- a. National Rifle Association, NRA Foundation, and NRA's Institute for Legislative Action (nra.org, nrahq.org, nrafoundation.org, and nraila.org)



- b. Charles Cotton
- c. Wayne LaPierre
- d. Jason Ouimet
- e. Texas State Rifle Association (tsra.com)
- f. Gun Owners Foundation of America and Gun Owners Foundation (gunowners.org)
- g. National Association for Gun Rights (nationalgunrights.org)
- h. Second Amendment Foundation (saf.org)
- i. Citizens Committee for the Right to Keep and Bear Arms (ccrkba.org)
- j. American Suppressor Association (americansuppressorsassociation.com)
- k. National Shooting Sports Foundation (nssf.org)
- l. National Shooting Sports Foundation Political Action Committee (nssfpac.com)

Please provide all responsive records from May 24, 2022, through June 3, 2022.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the term “record” in its broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

In addition, American Oversight insists that your office use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; governmental authorities may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Please search all records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting government business sent or received on the personal account of a governmental authority’s officer or employee constitutes a record for purposes of the Texas Public Information Act.¹

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments,

¹ Tex. Code § 552.002(a-2); *see also Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).

but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your office can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with Tex. Code § 552.267(a), American Oversight requests a waiver of fees associated with processing this request for records, because such a waiver “is in the public interest because providing the copy of the information primarily benefits the general public.” The requested records are directly related to the work of state officials, with the potential to shed light on the nature of communications between state officials and pro-gun advocacy organizations in the days following the shooting at Robb Elementary school in Uvalde, Texas. This matter is a subject of substantial public interest in Texas.² Accordingly, release of records that may help the public understand the operations and activities of state officials is in the public interest.

Release of the requested records will primarily benefit the public.³ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the requested records is not in American Oversight’s financial interest, but is rather in the public interest. American Oversight is committed to transparency and makes the responses governmental authorities provide to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the

² See Andrew Zhang, *Greg Abbott, Dan Patrick Cancel In-Person NRA Convention Appearances in Wake of Uvalde Mass Shooting*, Texas Trib., Updated May 27, 2022, <https://www.texastribune.org/2022/05/26/greg-abbott-nra-uvalde/>.

³ Tex. Code § 552.267(a).

public would benefit from an enhanced understanding of the government’s activities through American Oversight’s analysis and publication of these records. American Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁴

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁵ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization’s investigations into misconduct and corruption in state governments;⁶ the posting of records related to the Trump Administration’s contacts with Ukraine and analyses of those contacts;⁷ posting records and editorial content about the federal government’s response to the Coronavirus pandemic;⁸ posting records received as part of American Oversight’s “Audit the Wall” project to gather and analyze information related to the administration’s proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁹ the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department’s process for issuing such waivers;¹⁰ and posting records and analysis of federal officials’ use of

⁴ American Oversight currently has approximately 16,000 followers on Facebook and 117,400 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited May 31, 2022); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited May 31, 2022).

⁵ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁶ *State Investigations*, American Oversight, <https://www.americanoversight.org/states>.

⁷ *Trump Administration’s Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

⁸ *See generally The Trump Administration’s Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; *see, e.g., CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

⁹ *See generally Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; *see, e.g., Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹⁰ *DOJ Records Relating to Solicitor General Noel Francisco’s Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ*

taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹¹

Accordingly, American Oversight qualifies for a fee waiver. If your office denies our request for a fee waiver, please notify American Oversight of any anticipated fees or costs in excess of \$40 prior to incurring such costs or fees.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your county on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Emma Lewis at records@americanoversight.org or (202) 919-6303. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Emma Lewis

Emma Lewis
on behalf of
American Oversight

Documents, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹¹ See generally *Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; see, e.g., *New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

PLAINTIFF'S EXHIBIT T

Subject: [Records Center] Public Information Request :: R012836-060822

Date: Tuesday, June 21, 2022 at 1:56:18 PM Eastern Daylight Time

From: TEXAS AG Public Information

To: records@americanoversight.org

EXTERNAL SENDER

--- Please respond above this line ---

June 21, 2022

Ms. Emma Lewis
American Oversight
records@americanoversight.org
VIA E-MAIL ONLY

Re: Public Information Request No. R012836

Dear Ms. Lewis:

This e-mail is in response to your public information request to the Office of the Attorney General ("OAG"), received by the OAG on June 7, 2022.

The OAG has reviewed its files and has no information responsive to your request. If you have any questions, please contact publicrecords@oag.texas.gov.

Sincerely,

Marisol Bernal-Leon
Public Information Coordinator's Office
Office of the Attorney General

To monitor the progress or update this request please log into the [Public Records Center](#)



CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED American Oversight v. Texas Governor Greg Abbott, in his official capacity, and Texas Attorney General Ken Paxton, in his official

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet: Name: _____ Email: _____ Catherine L. Robb catherine.robbs@haynesboone.c Address: _____ Telephone: _____ 600 Congress Ave., Ste. 1300 512-867-8400 City/State/Zip: _____ Fax: _____ Austin, TX 78701 512-867-8611 Signature: _____ State Bar No: _____ 2407924		Names of parties in case: Plaintiff(s)/Petitioner(s): _____ American Oversight Defendant(s)/Respondent(s): _____ Texas Governor Greg Abbott Texas Atty Gen. Ken Paxton [Attach additional page as necessary to list all parties]		Person or entity completing sheet is: <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input checked="" type="checkbox"/> Other: Public Inf				
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate & Mental Health <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings </div> <div style="width: 48%;"> <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____ </div> </div>				
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input checked="" type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do not select if it is a family law case):					
<input checked="" type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000					

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Cristi Maxwell on behalf of Catherine Robb
Bar No. 24007924
cristi.maxwell@haynesboone.com
Envelope ID: 65916400
Status as of 6/30/2022 2:51 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Catherine Robb		Catherine.robbs@haynesboone.com	6/30/2022 9:12:33 AM	SENT
Reid Pillifant		Reid.Pillifant@haynesboone.com	6/30/2022 9:12:33 AM	SENT
Carey Wallick		Carey.Wallick@haynesboone.com	6/30/2022 9:12:33 AM	SENT
Cristi LMaxwell		cristi.maxwell@haynesboone.com	6/30/2022 9:12:33 AM	SENT