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11/26/2025

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

Re: **Comments under Tex. Gov't Code § 552.304 – TTUS File Nos. 2025-812 & 2025-813; OAG ID No. OR25053385 (Requestor: Kevin Bass)**

Dear Attorney General:

I submit these comments under Tex. Gov't Code § 552.304 regarding the November 25, 2025 brief submitted by the Texas Tech University System ("TTUS") in OR25053385 (the "Brief"). In that Brief, TTUS seeks to withhold essentially all email metadata responsive to my October 3, 2025 requests and November 4, 2025 clarifications by invoking Government Code §§ 552.103, 552.107, 552.111, and 552.137.

I have previously submitted § 552.304 comments in a related matter (TTUS File Nos. 2025-844 & 2025-845) addressing TTUS's attempts to treat basic process-handling records as secret. I incorporate those comments here to the extent they describe the public-interest context and TTUS's pattern of broad, categorical assertions.

This comment focuses on the specific arguments and exhibits TTUS presents in OR25053385.

This request also does not arise in a vacuum. In TTUS File Nos. 2025-844 and 2025-845, involving my October 9, 2025 requests about TTUS's internal handling of my earlier TPIA filings and my October 6 preservation notice, TTUS has already asked your Office to withhold basic "how we handled your request" process records—search instructions, routing communications, and AG-notice letters—under many of the same provisions it cites here. In an informal matter (OR-25-046279-IC), I alerted the Open Records Division to TTUHSC's failure even to acknowledge that preservation notice. And in a separate § 552.269 cost complaint, I have challenged TTUS's use of highly aggregated, non-itemized "labor" and "viewing" estimates to make access to the same universe of records prohibitively expensive. Taken together, those matters reflect a broader pattern in which TTUS resists disclosure precisely when the records would illuminate how it is handling my FERPA, disciplinary, and Public Information Act rights. That pattern is why, in this ruling, it is especially important to require TTUS to apply §§ 552.103, 552.107, 552.111, and 552.137 in a narrow, record-specific way and to release segregable,

factual metadata rather than converting email-header spreadsheets into a new, de facto category of secret litigation material.

## I. The records at issue are narrow email-metadata fields, not full email content

As clarified on November 4, 2025, my requests here do **not** seek email bodies or attachments. They seek a discrete, structured metadata set—fields such as:

- From, To, Cc, Bcc;
- Sent/received date and time;
- Subject line; and
- Basic header information (message-ID, thread/conversation ID, folder path, size, attachment count and filenames)—

for a small set of custodians from October 3-31, 2025, concerning TTUS's handling of my academic, FERPA, and Public Information Act matters.

TTUS's own Brief explains that the requested email-metadata has been compiled into Excel spreadsheets labeled "Exhibit E," which TTUS uploaded separately to your Office because the spreadsheets "could not be converted to a readable format from Excel, considering the number of responsive cells contained in each sheet." TTUS further states that cells containing information it considers protected under FERPA have been "removed and replaced with the acronym 'FERPA.' In other words, TTUS has already generated a text-searchable spreadsheet export of the email-metadata it now seeks to withhold.

The question before you is not whether TTUS can generate the metadata (it has already done so), but whether it may withhold the **entire** metadata dataset by layering together §§ 552.103, 552.107, 552.111, and 552.137.

If TTUS's position is accepted, any time a requestor is involved in litigation or possible litigation with a university, all email metadata involving that person or their matter would effectively become categorically secret. That would be a drastic expansion of these exceptions and inconsistent with the Public Information Act's presumption of openness.

## II. Section 552.103 cannot convert "anything about a litigant" into a secret category

TTUS devotes much of the Brief to § 552.103, pointing to:

- my prior and pending lawsuits,
- my preservation notices,
- public statements criticizing TTUS, and
- a paragraph in one federal complaint where I noted that I "will seek metadata/listserv expansion logs" in discovery.

From those facts, TTUS argues that all responsive metadata is "related to" litigation and that my PIA requests are an attempt at "expedited discovery."

Even if one assumed, for the sake of argument, that litigation was pending or reasonably anticipated on the dates of my requests, § 552.103 does not support the blanket withholding TTUS proposes.

**A. The § 552.103 test is record-specific and has two prongs**

Under § 552.103, a governmental body must show that:

1. litigation was pending or reasonably anticipated on the date it received the request; and
2. the **particular information at issue** is related to that litigation.

TTUS makes almost no effort in the Brief to satisfy the second, record-specific prong. Instead, it effectively asks your Office to hold that because my requests concern general subjects that also appear in my lawsuits, every row and every cell in Exhibit E is automatically "related to" litigation.

That is not how § 552.103 is written, and it is not how your Office has historically applied it. Even when litigation is clearly pending, your decisions limit § 552.103 to information that actually pertains to claims or defenses—not entire categories of operational records that merely involve the same people or topics.

Here, a substantial portion of the metadata concerns:

- TTUS's handling of my FERPA and PIA requests;
- scheduling and routine administrative coordination; and
- communications about compliance, record-keeping, and internal procedures.

Those entries would exist whether or not I had filed any lawsuit. They describe how TTUS is performing its duties as a public institution, not litigation strategy. Treating them as categorically "litigation information" would effectively allow any agency facing criticism or legal risk to seal off its basic operational records.

**B. The PIA and civil discovery are separate systems**

TTUS frames my requests as "expedited discovery," but the Legislature has taken pains to keep the Public Information Act and civil discovery in separate lanes. Among other things:

- the PIA does **not** limit the scope of civil discovery; and
- exceptions under the PIA do **not** create new discovery privileges.

Likewise, the fact that a requestor may someday seek similar information in discovery does not convert a properly framed PIA request into an abuse of process. Texans routinely have overlapping rights to information under different legal mechanisms.

Allowing a governmental body to invoke § 552.103 whenever it simply prefers to produce information in discovery—on its own timetable, with its own conditions—would turn the statute on its head. The PIA is not subordinate to litigation preferences.

**C. Information already possessed by all parties is not shielded by § 552.103**

Your Office has consistently held that once information has been obtained by all parties to a litigation through discovery or otherwise, § 552.103 no longer justifies withholding that information.

That principle fits this case squarely, especially for metadata entries concerning emails to or from me. I necessarily know that these emails occurred, and in many cases I already possess the content. Putting that same information into a spreadsheet does not make it newly secret.

For any row in Exhibit E that reflects a message where I am a sender or recipient—or where the substance has already been disclosed to me or filed in court—§ 552.103 should not apply.

**D. Even where § 552.103 applies, TTUS must segregate and release the rest**

At the very most, TTUS might be able to show that a subset of the metadata (for example, entries directly reflecting unreleased litigation strategy) relates to pending or anticipated litigation. That does not open the door to withholding the entire dataset.

I respectfully ask your Office to require TTUS to release metadata for:

- communications to or from me;
- communications that reflect routine administrative handling (PIA processing, FERPA responses, scheduling, IT work); and
- messages whose subjects and routing show no concrete connection to litigation strategy.

If TTUS continues to claim § 552.103 for particular categories, it should be required to clearly mark those entries and explain, at least in general terms, how each category actually relates to the litigation, rather than relying on a blanket label.

## III. Section 552.107 does not justify a categorical metadata blackout

TTUS next invokes § 552.107(1) (attorney-client privilege) to argue that any metadata involving in-house or outside counsel is categorically protected.

To properly claim § 552.107(1), a governmental body must show that:

1. the information documents a communication;
2. the communication was made for the purpose of facilitating legal services;
3. the communication was between or among the client and its attorneys or their representatives; and
4. the communication was intended to be and has remained confidential.

Your Office has also made clear that the privilege does not apply when attorneys are performing purely administrative, supervisory, or political roles rather than giving legal advice, or where communications have been shared outside the privileged circle.

TTUS's approach goes far beyond those requirements. In substance, it treats any metadata row in which an attorney appears in a To/Cc/Bcc field as privileged, regardless of whether the underlying email concerned legal advice or something far more mundane, such as:

- scheduling;
- departmental logistics;
- student-services coordination; or
- policy implementation.

It also treats the **existence** of a communication—who emailed whom, and when—as privileged in itself, rather than focusing on whether the content actually reveals legal advice.

The metadata at issue here is distinct from the email bodies. It consists of factual details such as:

- who was involved;
- when messages were sent; and
- short subject lines.

Your Office routinely requires disclosure of "basic information" of this sort in other contexts, even when narrative descriptions or attachments remain confidential.

Where TTUS can show that a specific subject line or header field would itself disclose privileged legal advice or concrete litigation strategy, targeted redaction of that item may be appropriate. But that does not justify withholding:

- every row where an attorney appears anywhere on the header; or
- basic routing information (from/to/cc/bcc and timestamps) for otherwise routine communications.

I therefore request that your Office require TTUS to apply § 552.107(1) in a **narrow, record-specific** way and to release metadata where attorneys appear in administrative, supervisory, or informational roles that do not meet the privilege test.

## IV. Section 552.111 and work-product concepts cannot swallow the metadata

TTUS also cites § 552.111 (agency memoranda / deliberative process and work product) in broad terms. Under your Office's own guidance, § 552.111 is limited to advice, opinions, and recommendations on policy matters and to work product prepared in anticipation of litigation.

The metadata in Exhibit E is overwhelmingly factual:

- who communicated with whom;
- on what dates and times; and
- regarding which general topics.

That is not the kind of deliberative content § 552.111 is meant to protect. Nor does a timestamp showing that an administrator emailed counsel at 3:42 p.m. transform that timestamp into "work product."

The work-product component of § 552.111 protects materials prepared for trial or in anticipation of litigation—not every background fact sitting in the same email system.

Again, if TTUS can demonstrate that a particular metadata field (e.g., a highly specific subject line) would reveal an attorney's mental impressions, narrow redaction may be suitable. But § 552.111 does not authorize a blanket refusal to disclose an entire metadata export solely because some entries are loosely connected to internal deliberations.

## V. Section 552.137 allows targeted redaction of some email addresses, not wholesale withholding

Finally, TTUS points to § 552.137 to justify withholding email addresses. That provision generally makes confidential the email address of a member of the public that is provided for the purpose of communicating with a governmental body.

It does **not** cover:

- official government email addresses of TTUS employees;
- institutional addresses; or
- many business/vendor addresses.

I do not contest TTUS's ability to redact:

- personal-email addresses of members of the public covered by § 552.137; or
- student personal-email addresses where FERPA or related provisions apply.

What § 552.137 does **not** do is permit TTUS to treat the entire metadata dataset as confidential simply because some cells might contain covered personal addresses. At most, it allows cell-level redactions within otherwise public metadata.

To make my request as narrow and reasonable as possible, I expressly consent to TTUS:

- redacting personal-email addresses covered by § 552.137;
- redacting non-party student identifiers under FERPA; and
- redacting subject-line fragments that your Office concludes would necessarily reveal confidential information.

This consent is intended to facilitate release of the remaining metadata. It should not be construed as agreement that TTUS's broad interpretations of §§ 552.103, 552.107, or 552.111 are correct, or as a waiver of my rights in any other context.

## VI. Requested ruling

For all of these reasons, I respectfully ask your Office to:

1. **Reject TTUS's blanket claims** under §§ 552.103, 552.107, 552.111, and 552.137 as applied to the entirety of Exhibit E.

2. **Order TTUS to release the metadata in Exhibit E** to the maximum extent consistent with the Act, including at least:

    - all rows reflecting emails to or from me (subject to FERPA and § 552.137 redactions);
    - all rows reflecting administrative, scheduling, and PIA/FERPA-handling communications, as distinct from litigation strategy; and
    - header-level information (from/to/cc/bcc, dates and times, and appropriately sanitized subject lines) even where some underlying narrative content may be withheld.

3. **Require TTUS, where it continues to claim §§ 552.103, 552.107, or 552.111 for particular entries,** to clearly mark those entries and articulate the basis by category, so your Office can conduct a meaningful review rather than endorsing a categorical exemption for "metadata."

4. Clarify, consistent with your prior precedent, that:

    - § 552.103 is **discretionary**, does not make information confidential, and does not apply to information already possessed by all parties to a litigation; and
    - § 552.103 expires when the underlying litigation concludes.

The Public Information Act begins from a presumption that government information is open. Metadata of the kind at issue here is one of the few tools a requestor has to verify whether a public institution is handling records lawfully and in good faith. Allowing TTUS to hide every trace of that activity whenever a student or employee is also a litigant would undermine both the letter and the spirit of the Act.

Thank you for your consideration.

Sincerely,

Kevin Bass, PhD, MS
Requestor
cc: Texas Tech University System (via Brontë Staugaard, Assistant General Counsel)