



TEXAS TECH UNIVERSITY SYSTEM[®]

Office of General Counsel

November 25, 2025

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

The Honorable Ken Paxton
Attorney General of the State of Texas
Open Records Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

RE: Texas Public Information Act Request
Original Requests: October 3, 2025
Response to Clarification/Narrowing: November 4, 2025
Requestor: Kevin Bass

Dear Attorney General Paxton:

Pursuant to the Texas Public Information Act, on November 18, 2025, Texas Tech University System (“TTUS”) electronically filed a request for an Open Records Decision (ORD) regarding exceptions to public disclosure of the information requested. The November 18, 2025, request was electronically submitted at 12:03 p.m. and was given OAG Tracking ID #OR25053385. (Exhibit “A”)

As stated in our ORD, on October 3, 2025, Texas Tech University System (TTUS) received two requests from Kevin Bass (the “Requestor”) for a “metadata only” export of emails and other messages.¹ On October 17, 2025, TTUS sent a request for clarification and narrowing to the Requestor. On November 4, 2025, the Requestor provided identical/verbatim clarifications to each of his original October 3, 2025, requests. Under the Act, the request is deemed received on the date clarification is provided. *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010). The clarified requests are attached as Exhibit “C”.²

According to the Texas Public Information Act, a governmental body must request an open records decision (ORD) of the Attorney General for exceptions to public disclosure on or before the end of the 10th business day after the date of receiving the written request, which would be no later than November 18, 2025. TTUS requested an open records decision on November 18, 2025. TTUS’s request for an open records decision is attached as Exhibit “A”.

¹ The October 3, 2025, requests are attached as Exhibit “B”.

² In the interest of efficiency, TTUS has consolidated the clarified requests received from the requestor as the clarified requests were identical, received on the same day, and they rely on the same set of facts and/or legal exceptions.

Pursuant to the Texas Public Information Act, a governmental body that requests an Attorney General decision for exceptions to public disclosure must, not later than the 15th business day after the date of receiving the written request, submit to the Attorney General written comments stating the reasons why the above-stated exceptions apply. As explained above, since the date of receipt of the Requestor's clarified requests was November 4, 2025, the date by which TTUS must submit its detailed comments is November 25, 2025. Therefore, this brief is timely filed.

On November 18, 2025, TTUS responded to the Requestor that it is seeking an opinion from the Attorney General on those items it claims should be excepted from public disclosure. The response to the Requestor is attached as Exhibit "D". As indicated above, this letter includes specific comments explaining why the information related to the Requestor's requests are excepted from public disclosure under the Texas Public Information Act. The requested information is uploaded separately but referred to herein as Exhibit "E" (See Exhibit "E" attached herein for further information on marked redactions).³

I. FACTS

The relevant facts are as follows:

1. TTUS is an institution of higher education in the State of Texas as defined by Texas Education Code §61.003.
2. Texas Tech University Health Sciences Center (TTUHSC) is a component of TTUS.
3. TTUS's attorneys are responsible for handling all legal matters for the components of TTUS, including public information act requests. Eric Bentley, Ronny Wall, Brontë Staugaard, Vicki Dorris, Joana Harkey, Michael Hopkins, Victor Mellinger, Frank Gonzales, Traci Siebenlist, Lindzi Timberlake, Jenee Duran, Diana Flores, James Henderson, Michelle Miller, Barry Macha, and William Webster are part of TTUS's Office of General Counsel.
4. On November 13, 2023, the Requestor filed a lawsuit against Texas Tech University alleging that TTUHSC unlawfully suspended and banned the Requestor from campus in retaliation for exercising his free speech rights. *See* Exhibit "F".
5. On March 6, 2024, the Requestor's Non-Suit, *without* prejudice, was recognized and granted by the 237th District Court in Lubbock County, Texas. *See* Exhibit "G".
6. On October 3, 2025, the Requestor submitted the original metadata requests. Following a request for clarification, the Requestor narrowed his request on November 4, 2025, to seek email metadata only (excluding body text) for the date range Oct 3–Oct 31, 2025, from custodians Eric Bentley, Ronny Wall, William

³ The information contained in Exhibit "E" is in Excel Spreadsheets and could not be converted to a readable format from Excel, considering the number of responsive cells contained in each sheet. Therefore, the responsive information (Exhibit "E") is being uploaded separately and is not "attached" to this brief.

Webster, Amanda McSween, and Beverly Muñoz. The search terms specified by the Requestor include: “Kevin Norris Bass,” “dismissal,” “appeal,” “name-clearing,” “Preservation Notice,” and “P3.” *See Exhibits “A” & “B”.*

7. On October 6, 2025, Requestor sent a preservation notice to multiple TTUS and TTUHSC employees and/or departments, a request that TTUHSC Records Custodian, Legal, and IT Leadership a request to “immediate[ly] preserv[e] [] all records and communication potentially responsive to [his] Texas Public Information Act (PIA) and Family Education Rights and Privacy Act (FERPA) requests. *See Exhibit “H”.*
8. On October 20, 2025, Requestor sent a litigation hold related to “(i) class/listserv broadcasts (including the message titled “VACATION and other stuff”), drafts/approval chains, distribution lists, and any recall/replace or deletion logs/metadata; (ii) Teams/Slack/SharePoint/Outlook messages; (iii) Threat Assessment Team files and any campus-access restrictions, BOLOs, site bans, or rotation pulls; (iv) Registrar transcript/notation policies and audit logs; and (v) communications to third parties (residency programs/hospitals/media/donors) conveying stigmatizing statements.” *See Exhibit “H”.*
9. On October 20, 2025, Requestor sent another preservation notice related to “dismissal/disciplinary actions; communications to students or third parties; listserv/broadcast emails (and drafts, approvals, recalls, and deletion logs/metadata); safety-rationale messaging (e.g., BOLOs, campus access, site bans); name-clearing hearing requests, scheduling, and protocols; SDS/ADA/§504 accommodation requests and determinations; LMS/security/IT access logs; calendars; chats (Teams/Slack); texts; DMs; voicemail.” *See Exhibit “H”.*
10. On October 20, 2025, Requestor re-served the litigation hold originally transmitted on October 6, 2024, to include additional TTUS and TTUHSC employees and/or departments. *See Exhibit “H”.*
11. Before and subsequent to sending the requests subject to this matter herein, Requestor has made multiple posts on the social media platform “X” implicating and threatening “another round” of litigation against TTUS/TTUHSC. *See Exhibit “I”.*
12. On November 5, 2025, the Requestor filed a verified original petition and application for temporary injunction against TTUHSC officials (including Amanda McSween), styled *Kevin Bass v. Lori Rice-Spearman, Ph.D., et al.*, Cause No. DC-2025-CV-1817, in the 237th District Court of Lubbock County, Texas. The Requestor states in his petition that he “originally transmitted this petition for electronic filing... on November 5, 2025, at approximately 12:00 a.m.... within minutes of the target date of November 4, 2025.” *See Exhibit “J”.*

13. As stated above, on November 5, 2025, the Requestor filed a new lawsuit with the 237th Judicial District Court, in Lubbock County, Texas. The subject matter of Requestor's lawsuit, involves the Requestor's dismissal from the School of Medicine, his academic appeals, and his request for a "name-clearing hearing." *See Exhibit "J".*
14. On November 7, 2025, the Requestor filed a verified complaint for damages, declaratory, and injunctive relief against TTUHSC and TTUHSC officials (including Amanda McSween), styled *Kevin N. Bass v. Texas Tech University Health Sciences Center, et al.*, Cause No. 5-25CV-244-H, in the United States District Court, Northern District of Texas, Lubbock Division. *See Exhibit "K".*
15. In the Requestor's November 7, 2025, lawsuit, he alleges, among other things, that TTUHSC and its officials violated federal disability laws and the U.S. Constitution by denying the Requestor meaningful access to a disciplinary hearing, retaliating against him for protected speech, and publishing stigmatizing information regarding his dismissal. *See Exhibit "K".*
16. The custodians targeted in the clarified requests include named Defendants in the pending lawsuits (e.g., Amanda McSween) and include attorneys handling the defense (e.g., William Webster, Eric Bentley, Ronny Wall). *See Exhibit "B", "J", & "K".*
17. On October 30, 2025, TTUS submitted a brief containing similar arguments in response to a multitude of similar requests by the Requestor. The OAG Tracking ID for the October 30, 2025, brief is OR25048795, and the Request ID is 66348894. This request for an opinion should be considered together with OR25048795 for consistency purposes.

II. RELEVANT EXCEPTIONS

A. **TEX. GOV'T CODE §552.103 - Information Relating to Litigation.**

1. Under what is commonly referred to as the "litigation exception," information is excepted from public disclosure "if it is information relating to [civil] litigation...to which the state...is or may be a party or to which an officer or employee of the state..., as a consequence of the person's office or employment, is or may be a party." TEX. GOV'T CODE §552.103(a).
2. The litigation exception enables a governmental body to protect its litigation position by forcing parties seeking information related to the litigation to obtain such documents through the discovery process. *Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App. – Austin 2002, no pet.); Open Records Decision No. 551, 2002 WL 31827951, (1990) at 2-3; Tex. Att'y Gen. Op. No. 2009-18105, 2009 WL 5127819 at 3 (December 22, 2009). While the litigation exception may overlap with other

exceptions encompassing discovery privileges, it is not conditioned on the applicability of any discovery privilege; therefore, a governmental body may properly assert the litigation exception for privileged information (e.g. work product privilege or attorney-client privilege). Open Records Decision No. 677, 2002 WL 31827951 at 2 (2002). A governmental body is not required to demonstrate both the litigation exception and the applicability of a privilege under other law in order to except information from disclosure under the litigation exception. Open Records Decision No. 677, 2002 WL 31827951 at 2 (2002).

3. To qualify under TEX. GOV'T CODE §552.103, the information must be "related to" the subject matter of the litigation. TEX. GOV'T CODE §552.103(a); Open Records Decision No. 551, 2002 WL 31827951 (1990) at 3. For purposes of the Public Information Act ("Act"), the phrase "related to" is construed according to its plain language to mean "pertaining to," "associated with," or "connected with." *University of Texas Law School v. Texas Legal Foundation*, 958 S.W. 2d 479, 483 (Tex. App – Austin 1997, no pet.); *In re Texas Dept. of State Health Services*, 278 S.W. 3d 1, 4 (Tex. App. – Austin 2008, no writ); see *E. I. Du Pont de Nemours and Company v. Shell Oil Company*, 259 S.W. 3d 800, 806 (Tex. App. – Houston [1st Dist.] 2007, reh'g den.) (defining "related to" as meaning "have reference to" or "concern"). "Related to" is broader than "relevant to;" therefore, information can be excepted from disclosure under the litigation exception even if it is not relevant to the substantive issues in the lawsuit. *University of Texas Law School* 958 S.W. 2d at 483. The litigation exception allows a governmental body to withhold a wide range of information because the "related to" standard is much broader than the range of information actually used in litigation. *In re Texas Dept. of State Health Services*, 278 S.W. 3d at 4. The Legislature intended the standard to be broad. *Id.*
4. This exception applies if the litigation is pending or reasonably anticipated on the date that the requestor requests the information. TEX. GOV'T CODE §552.103(c). Litigation is "reasonably anticipated" if there is evidence demonstrating that litigation was "realistically contemplated" on the date of the request, and that the possibility of litigation ensuing was "more than 'mere conjecture'." Open Records Decision No. 677, 2002 WL 31827951 at 2 (2002). The determination is based on the totality of the circumstances, and may be demonstrated if particular steps toward filing suit have occurred. *Id.* In cases construing the work-product privilege, courts have held that litigation may be "reasonably anticipated" when (1) circumstances would have indicated to a reasonable person that there was a substantial chance of litigation, and (2) the party asserting the exemption had a good faith belief that litigation would ensue. *In re Texas Farmers Insurance Exchange*, 990 S.W. 2d 937, 342 (Tex. App – Texarkana 1999, orig. proceeding), citing to *Nat'l Tank Co. v. Brotherton*, 851 S.W. 2d 193, 204 (Tex. 1993); Open Records Decision No. 677, 2002 WL 31827951 at 4 (2002). Further, it is sufficient to establish the litigation

exception when a case is dismissed without prejudice, the information being sought is related to the subject matter of the lawsuit, and the governmental body anticipates the refiling of the suit. Tex. Atty. Gen. Op. OR 2015-15089, 2015 WL 4634135 (July 24, 2015) at *2; See also Tex. Atty. Gen. Op. OR 2021-04405, 2021 WL 1375882 (February 24, 2021) at *2.

5. Information in investigatory files related to civil litigation may be withheld from disclosure when the governmental body's attorney determines it should be withheld pursuant to §552.103. Open Records Decision No. 575, 1982 WL 173945 at 1 (1982); Tex. Att'y Gen. Op. OR 2009-16295, 2009 WL 4089419 at 1 (November 17, 2009).
6. In short, there are two prongs that TTUS must satisfy in order for documents to be excepted from disclosure under TEX. GOV'T CODE § 552.103: (1) the documents must be related to litigation and (2) litigation must have been anticipated or in progress at the time the request was received.
7. The documentation responsive to Requestor's November 4, 2025, clarification requests is clearly related to previous, reasonably anticipated, and pending litigation, as the information requested specifically relates to the subject matter of the original and new lawsuits.
 - a) The subject matter of the original lawsuit specifically relates to the allegation that TTUHSC unlawfully suspended and banned the Requestor from campus in retaliation for exercising his free speech rights. *See Exhibit "F".* Further, it was alleged that TTUHSC violated Requestor's due process rights. *See id.* This lawsuit was then dismissed by the Requestor in 2024 *without* prejudice. *See Exhibit "G".* As reasonably anticipated, Requestor filed two new lawsuits on November 5 & 7, 2025. *See Exhibit "J" & "K".* Requestor's November 5, 2025, lawsuit explicitly challenges his dismissal and the handling of his appeal and name-clearing hearing. *See Exhibit "J".* Requestor's November 7, 2025, federal lawsuit explicitly challenges the alleged disability-based denial of meaningful access to his disciplinary hearing, the University's 'selective departures' from written procedures, and the publication of 'stigmatizing accusations' tied to his dismissal. *See Exhibit "K".*
 - b) The Requestor's November 4, 2025, clarification requests seek metadata for emails containing the terms "dismissal," "appeal," and "name-clearing." *See Exhibit "B".* These are the precise legal issues raised in his original and new pending lawsuits. *See Exhibits "F", "J", & "K".* The "relatedness" prong of § 552.103 is indisputable because the Requestor has explicitly identified the requested metadata as the subject of his intended federal discovery. *See Exhibit "K".* In his Federal Complaint, under the heading "Publication logs, recipients, and continuing effects," the

Requestor states: “Plaintiff... will seek metadata/listserv expansion logs... to identify recipients... These materials support... the need for targeted, publication-only expedited discovery.” *See Exhibit “K” at p. 7, ¶ 43.* This admission in the Federal Complaint matches the PIA request verbatim. The PIA request seeks “metadata only” including “From, To, Cc, Bcc... attachment count + filenames.” The Federal Complaint admits he needs this exact “metadata” to “identify recipients.” The Requestor is attempting to utilize the Public Information Act to obtain “expedited discovery” outside the jurisdiction and supervision of the Federal Court. The Attorney General has long held that § 552.103 prevents precisely this type of circumvention of the discovery rules.

c) Further, the custodians targeted include Amanda McSween (a named Defendant in the suit) and TTUS attorneys. *See Exhibit “B”.* The metadata sought (who sent emails to whom, when, and the subject lines) could provide a “roadmap” of TTUS’s defense strategy and internal deliberations regarding the pending litigation. Therefore, the requests contained in Exhibit “B” are directly derived from the specific facts and causes of action in the Requestor’s original and new pending lawsuits. Consequently, the responsive information contained in Exhibit “E” is related to the previous and pending litigation. The following points outline how the requests and responsive records relate to both the original and new pending lawsuits:

(i) Search Terms “Dismissal” & “Appeal”: The Requestor demands metadata for “appeal” and “dismissal.” These terms mirror the factual timeline pleaded in Paragraph 8 of the original lawsuit (“Plaintiff appealed his suspension”) and Paragraph 10 (alleging attempts to “expel Bass without due process”). *See Exhibit “F”.* Further, the metadata is intended to reconstruct the decision-making timeline of the very acts challenged in the current, pending state court lawsuit. *See Exhibit “J”.* Moreover, these terms mirror the factual timeline pleaded in his Federal Complaint, where he alleges a “disability-based denial of meaningful access to a student disciplinary hearing” and challenges the “appeal” process as a sham. *See Exhibit “K”.*

(ii) Search Term “Professionalism”: The Requestor specifically seeks metadata containing the term “professionalism.” This directly correlates to the central evidentiary dispute in the original and new pending lawsuits. In the original lawsuit, the Requestor attached his emergency removal letter, which justified the TTUHSC’s adverse action based on “recent professionalism concerns” (among other

things). *See Exhibit “F”.* In his Federal Complaint, the Requestor alleges that Defendants fabricated “stigmatizing” notations regarding his “professionalism” to justify his dismissal and to retaliate against his protected speech. *See Exhibit “K”.* By searching for this specific term, the Requestor is seeking early discovery regarding the TTUS’s internal deliberations defending that specific characterization of his conduct.

(iii) Search Term “Name-clearing”: The Requestor seeks metadata for “name-clearing.” This is a legal term of art tied directly to the Due Process claims in his lawsuits. In Paragraph 54 of his original lawsuit, the Requestor cited the Supreme Court case *Goss v. Lopez* to argue that due process is required “where a person's good name, reputation, honor, or integrity is at stake”. *See Exhibit “F”.* The request for “name-clearing” metadata is an attempt to circumvent the discovery process and to bolster his specific cause of action in his pending lawsuits. *See Exhibit “J”.*

8. Litigation was pending and/or was reasonably anticipated by TTUS as explained below. Prior to (and after) TTUS received the Requestor’s original requests on October 3, 2025, TTUS reasonably anticipated litigation as the Requestor made representations and threats of litigation on the social media platform “X”. *See Exhibit “I”.* Through his posts, it was clear that Requestor was attempting to revitalize his previously dismissed lawsuit. *See id.* This is corroborated by the preservation notices/litigation holds contained in Exhibit “H” and solidified by Requestor’s filing of his new lawsuits on November 5 & 7, 2025. *See Exhibits “H”, “J”, & “K”.* The Requestor submitted his clarification on November 4, 2025. By his own admission in his filing, he transmitted his state court petition “within minutes of the target date of November 4, 2025” and the timestamp shows filing on November 5, 2025. *See Exhibit “J”.* Then, on November 7, 2025, the Requestor filed another lawsuit in Federal Court asserting similar claims to the previous lawsuits. *See Exhibit “K”.* Moreover, TTUS asserted its reasoning behind its reasonable anticipation of litigation on October 30, 2025, when it submitted a brief containing similar arguments in response to a multitude of similar requests by the Requestor.⁴ Thus, litigation was reasonably anticipated on the date of the October 3, 2025, original requests, and litigation was pending or, at the very least, reasonably anticipated on the date of the November 4, 2025, clarified requests. The following points illustrate how the litigation holds and the Requestor’s posts on “X” substantiate TTUS’s reasonable anticipation of litigation prior to even receiving the clarified requests on November 4, 2025:

⁴ The PIC ID for the October 30, 2025, brief is 2025-OR-844, and the OAG Tracking ID is OR25048795.

a) Litigation was reasonably anticipated by TTUS based on the preservation notice it received on October 6, 2025. *See Exhibit “H”*. This reasonable anticipation is corroborated by additional preservation notices/litigation holds received on October 20, 2025. *See id.*

b) Moreover, litigation is reasonably anticipated by TTUS based on the threats of litigation contained in the Requestor’s posts on the social media platform “X”. *See Exhibit “I”*. For example:

- (i) On October 1, 2025, Requestor posted, “I have submitted exhaustive public records requests regarding my dismissal from Texas Tech University Health Sciences Center School of Medicine. This will not be a public pressure campaign. This will be a total war for the truth.”
- (ii) On October 7, 2025, Requestor posted “Texas Tech used a playbook on me that is used to destroy people around the country. I hope to provide a public disincentive for institutions to use it on others, and provide an example counter-playbook for how to fight back.”
- (iii) In the comments under the October 7, 2025, post, Requestor posted “Suiting up for another round”, implicating and threatening another round of litigation against TTUS and/or TTUHSC.
- (iv) On October 8, 2025, Requestor reposted a previous post from September 2024 titled “It’s time for war”, commenting “I have the moral obligation to execute what I promised.” The “It’s time for war” post was related to Requestor’s allegations that he was deprived of his due process rights under the Texas Education Code by TTUHSC as alleged in his previous lawsuit. *See generally Exhibit “F”*.
- (v) On October 8, 2025, Requestor posted that he had filed a complaint with the Texas Attorney General’s Office regarding “non-acknowledgment by TTUHSC of [his] public records request and preservation notice.”
- (vi) On October 10, 2024, Requestor posted that “[a]s for lawsuits, let’s just say [] [i]t’s not out of the question.” Requestor continued in the post by requesting people to get in contact with his lawyer to provide any information related to “what happened” to him at Texas Tech. Further, Requestor requested that people share their story with him to “get more arrows in the quiver” and to “team up” against TTUS and/or TTUHSC.

(vii) On October 28, 2025, Requestor posted “[i]t’s time.” “Please support the legal effort.” The post contained a link to a donation website titled “[l]egal fees after being dismissed from med school.”

9. Therefore, the requests in Exhibit “B” pertain to and are connected/related to previous, reasonably anticipated, and pending litigation. The Requestor has already filed suit on an almost identical subject matter (Exhibit “F”), which was dismissed *without* prejudice (Exhibit “G”). Now, the Requestor has made good on his representations and threats by filing new lawsuits, largely based on the same subject matter of the original lawsuit. *See Exhibit “J” & “K”*. This history, combined with the discovery-like nature of his new requests, the preservation notices/litigation holds, the threats of litigation posted on “X”, and the recently filed lawsuits, clearly indicates that litigation was reasonably anticipated and is now pending as of November 5, 2025. *See Exhibits “B” & “F”-“K”*.

Consequently, based on the above facts, TTUS has met both prongs of the TEX. GOV’T CODE § 552.103 exception, and the documents in Exhibit “E”, should be withheld to allow the court’s discovery process to control the disclosure of these documents and protect TTUS’s rights and interests. *See Tex. Att’y Gen. Op. No. OR-2018-08255 and Tex. Att’y Gen. Op. No. OR-2018-15320* [“University may withhold the submitted information under Section 552.103(a) of the Government Code”].

B. Alternatively, The Requested Communications and Records Are Excepted Under Texas Government Code § 552.107 and Should Be Withheld.

1. Information the attorney general is prohibited from disclosing to the public because of a duty to a client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct is excepted from required disclosure. TEX. GOV’T CODE §552.107. The information protected under TEX. GOV’T CODE §552.107 is the same as that which is protected under TEX. R. EVID. 503 (“Rule 503”), the attorney-client privilege. Open Records Decision No. 676, 2002 WL 31827950 at 3 (2002). The purpose of the attorney-client privilege is to secure the free flow of information between attorney and client on legal matters, without the fear that details of the communication will be disclosed. *In re Monsanto*, 998 S.W. 2d 917, 922 (Tex. App. – Waco 1999, orig. proceeding).
2. Except as specifically provided by Rule 503⁵, a governmental body has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of legal services to the governmental body. TEX. R. EVID. 503(b)(1); Tex. Att’y Gen. Op. No. 2010-00024, 2010 WL 24981 at 1 (January 4, 2010). Confidential communications means those not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of legal services to the client or

⁵ Exceptions are (1) furtherance of crime or fraud; (2) claimants through the same deceased client; (3) breach of duty by a lawyer or client; (4) document attested by a lawyer; or (5) joint clients. TEX. R. EVID. 503(d).

those reasonably necessary for the transmission of the communication. TEX. R. EVID. 503(a)(5); Tex. Att'y Gen. Op. No. 2010-00024, 2010 WL 24981 at 1 (January 4, 2010). Confidentiality is based on the intent of the parties at the time the communication was made. *Osborne v. Johnson*, 954 S.W. 2d 180, 184 (Tex. App.–Waco 1997, no writ).

3. The attorney-client privilege applies to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A)-(D); Open Records Decision No. 676, 2002 WL 31827950 at 5 (2002); Tex. Att'y Gen. Op. No. 2010-00024, 2010 WL 24981 at 1 (January 4, 2010).
 - a) A “representative” of the client is a person (1) having authority to obtain legal services or act on such advice, or (2) any other person who makes or receives a confidential communication for the purpose of effectuating legal representation of the client while acting in the scope of their employment by the client. TEX. R. EVID. 503(a)(2); *Osborne v. Johnson*, 954 S.W. 2d at 184. Those persons in the first group are members of the entity’s “control group,” and those in the second group are determined under the “subject matter test” to be employees making communications at the direction of the employee’s superiors, where the subject matter of the communication is the performance by the employee of his or her duties, and involves the subject matter on which the attorney’s advice is sought. Open Records Decision No. 676, 2002 WL 31827950 at 5 (2002).
 - b) The attorney-client privilege only applies when the attorney or representative is involved in the capacity as providing or facilitating professional legal services to the governmental body. *In re Texas Farmers Insurance Exchange*, 990 S.W. 2d 937, 340 (Tex. App.–Texarkana 1999, orig. proceeding); Tex. Att'y Gen. Op. No. 2009-18103, 2009 WL 5127817 at 2 (December 22, 2009).
4. The attorney-client privilege extends to the entire communication, including the facts contained within the communication. *Huie v. DeShazo*, 922 S.W. 2d 920, 923 (Tex. 1996). According to Tex. Att'y Gen. Op. No. 2010-00024, the governmental body must establish the following to demonstrate the attorney-client privilege applies:
 - a) The information constitutes or documents a communication;
 - b) The communication was made for the purpose of facilitating the rendition of legal advice to the governmental body, and that the attorneys involved were in the capacity of providing legal services;
 - c) The communication was “between or among clients, client representatives, lawyers, and lawyer representatives;” and

d) The communication 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. Tex. Att'y Gen. Op. No. 2010-00024, 2010 WL 24981 at 1 (January 4, 2010).

5. We have marked the information to which section 552.107, attorney-client privilege, applies.⁶

- a) With respect to the metadata requested for communications with TTUS attorneys (including, but not limited to, Eric Bentley, Ronny Wall, Brontë Staugaard, Vicki Dorris, Joana Harkey, Michael Hopkins, Victor Mellinger, Frank Gonzales, Traci Siebenlist, Lindzi Timberlake, Jenee Duran, Diana Flores, James Henderson, Michelle Miller, Barry Macha, and William Webster), the privileged nature of these records is self-evident. Because these individuals serve as legal counsel for TTUS, the metadata evidencing communications between them and TTUS or one of its components constitutes documentation of confidential communications made for the express purpose of facilitating the rendition of professional legal services to TTUS or one of its components.
- b) In general, the fact that the information is to request or provide legal advice or services between TTUS or one of its components, representatives, lawyers, and lawyer representatives should also be self-evident.
- c) In general, the fact that the documents are metadata information of TTUS attorney emails or other communications made for the purpose of providing legal advice to TTUS or one of its components should also be self-evident.
- d) The parties involved in each communication to which this exception applies should be self-evident on the document or will be explained on the document.

The information in Exhibit “E”, as marked, was not intended to be disclosed to third parties. TTUS does not intend to disclose the drafts to third parties, and in fact, these drafts may contain inaccuracies as part of the drafting process. To our knowledge, none of the information in Exhibit “E” has been released to the public or to persons not within the classes of TTUS’s or one of its components’ “representatives” or “lawyers and their representatives.” Exhibit “E” should be withheld as marked.

⁶ The information contained in Exhibit “E” is in Excel Spreadsheets and could not be converted to a readable format from Excel, considering the number of responsive cells contained in each sheet. Therefore, the responsive information (Exhibit “E”) is being uploaded separately and is not “attached” to this brief. Further, the information that is marked in **RED** is the information TTUS asserts that section 552.107 applies.

C. Alternatively, The Requested Communications and Records Are Excepted Under Tex. Gov't Code §552.111 and Should Be Withheld.

1. An interagency memoranda or letter that would not be available to a party in litigation with the agency is excepted from required disclosure. TEX. GOV'T CODE § 552.111. 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* Open Records Decision No. 615 at 5.
2. 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 City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.); *Lett v. Klein Indep. Sch. Dist.*, 917 S.W. 2d 455, 457 (Tex. App.—Houston [14th Dist.] 1996, writ denied); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W. 2d 408, 412 (Tex. App.—Austin 1992, no writ); Open Records Decision No. 538 at 1-2 (1990); Tex. Atty. Gen. Op. No. 2010-15653; and Tex. Atty. Gen. Op. No. 2010-06608.
3. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. Open Records Decision No. 615 at 5; *see also City of Garland*, 22 S.W.3d 351 (section 552.111 not applicable to personnel-related communications that did not involve policymaking).
4. 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). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); ORD 615 at 4-5. However, 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* Open Records Decision No. 313 at 3 (1982); Tex. Atty. Gen. Op. No. 2010-12406; and Tex. Atty. Gen. Op. No. 2010-17898.
5. Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with privity of interest. *See* Open Records Decision Nos. 631 at 2 (1995); 561 at 9 (1990); Tex. Atty. Gen. Op. No. 2010-15653; and Tex. Atty. Gen. Op. No. 2010-17898. For section 552.111 to apply to communications with a third party, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. *See* ORD 561 at 9; and Tex. Atty. Gen. Op. No. 2010-15653.

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* ORD 561 at 9; and Tex. Atty. Gen. Op. No. 2010-15653.

6. A preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document and is excepted in its entirety from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor); Tex. Atty. Gen. Op. No. 2010-17898; Tex. Atty. Gen. Op. No. 2010-06608; Tex. Atty. Gen. Op. No. 2010-12406; and Tex. Atty. Gen. Op. No. 2010-15653. Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See* ORD 559 at 2-3; and Tex. Atty. Gen. Op. No. 2010-17898. Thus, section 552.111 or the "deliberative process privilege" encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See* ORD 559 at 2; and Tex. Atty. Gen. Op. No. 2010-17898.
7. According to Tex. Atty. Gen. Op. No. 2010-15653, the governmental body must establish the following to demonstrate the deliberative process privilege applies:
 - a) The information constitutes or documents a communication;
 - b) The communication represents the drafter's advice, opinion and recommendation regarding the governmental body's policies or the form and content of a final document that will be released to the public in its final form;
 - c) The communication was between or among the governmental body's employees, representatives, or agents or it was between or among the governmental body and a third party in privity of interest or common deliberative process with the governmental body; and
 - d) If the communication was with a third party, the identity of the third party and the nature of its relationship with the governmental body; and
 - e) The communication was not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the deliberative process or as necessary for the transmission of the communication. Tex. Atty. Gen. Op. No. 2010-15653. *See also* Tex. Atty. Gen. Op. Nos. 2010-06608 and 2010-17898.

8. We have marked the information to which section 552.111, deliberative process privilege, applies.⁷
 - a) In general, the fact that the documents are communications between or among the governmental body's employees, representatives, or agents should be self-evident on the documents as all of the parties to the documents are TTUS and TTUHSC employees.
 - b) In general, the fact that the documents represent the drafter's advice, opinion, and recommendation regarding the governmental body's policies or practices or the form and content of a final document that will be released to the public should also be self-evident, as some of these documents are preliminary drafts and discussions regarding policy decisions.
 - c) These documents, and the documents they represent, were all communications between attorneys with the TTUS Office of General Counsel and employees of TTUS or one of its components, and they were not intended to be disclosed to outside parties.

Therefore, the information contained in Exhibit "E" should be withheld under this exception as described above. The information in Exhibit "E" should be withheld as marked.

D. Family Education Rights and Privacy Act (FERPA)

1. To the extent the metadata contains the names or personally identifiable information of students other than the Requestor, such information is confidential under FERPA and has been withheld.⁸ See Tex. Att'y Gen. Op. OR2008-02262 (2008).

E. TEX. GOV'T CODE § 552.137 – Public E-mail Addresses

1. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of

⁷ The information contained in Exhibit "E" is in Excel Spreadsheets and could not be converted to a readable format from Excel, considering the number of responsive cells contained in each sheet. Therefore, the responsive information (Exhibit "E") is being uploaded separately and is not "attached" to this brief. Further, the information that is marked in **BLUE** is the information TTUS asserts that section 552.111 applies.

⁸ The information contained in Exhibit "E" is in Excel Spreadsheets and could not be converted to a readable format from Excel, considering the number of responsive cells contained in each sheet. Therefore, the responsive information (Exhibit "E") is being uploaded separately and is not "attached" to this brief. Further, the cells with information protected under FERPA have been removed and replaced with the acronym "FERPA".

the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). TEX. GOV'T CODE § 552.137(a)-(c).

2. The request seeks "To, Cc, Bcc" fields. To the extent these fields contain the private, personal email addresses of members of the public (that are not government domain addresses), TTUS has marked them for withholding. As such, TTUS requests that the information in Exhibit "E" be withheld as marked.⁹

III. CONCLUSION

For the reasons stated above, TTUS requests that the records included for your review, uploaded separately, but referred to as Exhibit "E", be excepted from public disclosure as described above. We await your decision regarding this matter and thank you in advance for your kind assistance.

Should you have any questions or need any additional documentation or documents, please do not hesitate to contact me.

Very truly yours,

Brontë Staugaard

Brontë C. Staugaard
Assistant General Counsel

Enclosures: Exhibit "A" – Attorney General Request for Opinion Letter
Exhibit "B" – October 3, 2025, Requests
Exhibit "C" – November 4, 2025, Responses to Clarifications/Narrowings (Clarification Requests)
Exhibit "D" – Response to Requestor Letter
Exhibit "E" – Documents Requested to be Withheld
Exhibit "F" – Requestor's Original Lawsuit
Exhibit "G" – Order of Nonsuit without Prejudice
Exhibit "H" – Preservation Notices/Litigation Holds
Exhibit "I" – Threats of Litigation-Posts on "X"
Exhibit "J" – November 5, 2025, Pending State Lawsuit by Requestor
Exhibit "K" – November 7, 2025, Pending Federal Lawsuit by Requestor

xc: (without enclosures)

Kevin Bass
kbassphiladelphia@gmail.com

⁹ The information contained in Exhibit "E" is in Excel Spreadsheets and could not be converted to a readable format from Excel, considering the number of responsive cells contained in each sheet. Therefore, the responsive information (Exhibit "E") is being uploaded separately and is not "attached" to this brief. Further, the information that is marked in **GREEN** is the information TTUS asserts that section 552.137 applies.