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11/25/2025

Via Electronic Submission and Mail

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

Re: Comments under Tex. Gov't Code § 552.304
Requestor: Kevin Bass
Request Date: October 9, 2025
Gov't Body: Texas Tech University System / TTUHSC
TTUS File Nos.: 2025-844 & 2025-845

Dear Attorney General Paxton:

I submit these written comments under Tex. Gov't Code § 552.304 regarding the Texas Tech University System's ("TTUS") October 30, 2025 brief (the "Brief") seeking to withhold records responsive to my October 9, 2025 Public Information Act ("PIA") requests:

1. Internal Handling of Preservation Notice (Oct. 6-present); and
2. Rolling Window - Communications & Artifacts After Earlier TPIA Submissions (Oct. 3-present).

As explained below, TTUS has not met its burden to withhold most of the requested information under Tex. Gov't Code §§ 552.103, 552.107, or 552.111. The PIA is to be liberally construed in favor of disclosure and exceptions narrowly construed. Tex. Gov't Code §§ 552.001(a), (b), 552.006. In light of that policy and the case law and Attorney General decisions construing these sections, your Office should require prompt, tailored production, with only properly justified redactions.

I am not a lawyer; these comments reflect my good-faith understanding of the law and the authorities cited.

I. The Requests Are Narrow and Concern TTUS's Handling of PIA/Preservation Duties

On October 9, 2025, I submitted two discrete requests.

A. Internal Handling of Preservation Notice (Oct. 6-present)

On October 6, 2025, TTUS and TTUHSC received my written “Preservation Notice.” That notice expressly invoked TTUS’s duties under the PIA and FERPA and asked TTUS to preserve “all records and communications potentially responsive to [my] Texas Public Information Act (TPIA) and FERPA requests” going forward, in line with TTUS’s obligations to preserve public information. See Tex. Gov’t Code §§ 552.002, 552.004, 552.351.

On October 9, I requested records sufficient to show TTUS/TTUHSC’s receipt, acknowledgment, and internal handling of that preservation notice during a short window (Oct. 6, 8:00 a.m. CT, through time of receipt), including:

• routine routing and logging records (emails, ticketing entries, workflow notices, calendar entries, confirmations from custodians or vendors, etc.); and
• any acknowledgments, internal notifications, or “litigation hold”-style directives that functioned to preserve responsive public information.

B. Rolling Window - Communications & Artifacts (Oct. 3-present)

Separately, I requested communications and artifacts created after my October 2-3 PIA submissions that relate to:

• my own matters (Kevin Norris Bass and known name/email variants);
• my preservation notice and any right-to-reply communications;
• P3/SPPCC/professionalism materials and decisions;
• transcript/Title IV matters; and
• hearing recordings/transcripts, integrity/audit handling, and related items.

The timeframe is again narrow: October 3, 2025, 12:30 a.m. CT through time of receipt. The request focuses on specific institutional actors (PIO/OGC, Registrar, Student Life/Student Affairs, IT, program leadership, etc.) and explicitly invited clarification or narrowing under §§ 552.222 and 552.267 to manage any genuine burden.

These are process-oriented requests. They seek to illuminate how TTUS and TTUHSC received, routed, logged, and responded to my PIA requests and preservation communications—not to circumvent discovery or obtain every internal document mentioning me.

That fits squarely with the PIA’s policy 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,” and that the Act “shall be liberally construed to implement this policy.” Tex. Gov’t Code § 552.001(a), (b).

The Brief, however, attempts to recast these narrow PIA-process requests as nothing more than discovery for litigation, and then tries to wrap almost all of TTUS’s PIA handling in §§ 552.103,

552.107, and 552.111. That is inconsistent with the statutory text and with the way those exceptions have been applied by both the courts and your Office.

II. TTUS Has Not Established That § 552.103 Applies to Most of the Requested Information

Section 552.103 (the "litigation exception") allows withholding only if the governmental body shows:

1. litigation involving the governmental body was pending or reasonably anticipated on the date of the request, and
2. the information at issue relates 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.); Tex. Att'y Gen. ORD-551 at 4 (1990); Tex. Gov't Code § 552.103(c).

The Attorney General's Public Information Handbook emphasizes that § 552.103(a) requires **concrete evidence** that litigation is realistically contemplated, not mere conjecture. See, e.g., Tex. Att'y Gen. ORD-518 at 5 (1989) (litigation must be "realistically contemplated" and "more than mere conjecture"); ORD-452 at 4 (1986); ORD-555 (1990). Whether litigation is reasonably anticipated is determined case by case and—critically—only as of the date the request is received. Tex. Gov't Code § 552.103(c); Tex. Att'y Gen. OR1999-3188.

TTUS's Brief leans on three things:

1. the prior lawsuit I filed in late 2023 and nonsuited in March 2024;
2. my October 2025 preservation notice and PIA activity; and
3. selected social-media posts in which I use rhetorical advocacy language (e.g., "war for the truth," "another round").

Even if some of that might support applying § 552.103 to a narrow set of "core litigation strategy" materials, it does not justify withholding the large universe of records that merely document TTUS's PIA and preservation handling.

A. A Concluded, Nonsuited Case Does Not Automatically Encase Later PIA-Process Records

Under the two-part test, TTUS must show that as of October 9, 2025, litigation was pending or reasonably anticipated. By that date, the prior lawsuit had been nonsuited months earlier and was over. TTUS points to overlapping subject matter and my continued PIA activity, but your Office has consistently required **objective, concrete evidence** that litigation is realistically contemplated—such as:

• a letter from opposing counsel containing a specific threat to sue;
• a statutory notice of claim (e.g., under the Tort Claims Act); or

• the filing of an administrative charge (e.g., EEOC/TWC) covering the dispute.

See Tex. Att'y Gen. ORD-555 (1990); ORD-336 (1982); ORD-346 (1982); ORD-288 (1981); ORD-638 (1996).

By contrast, this Office has repeatedly held that public threats to sue, generalized anger, or the mere hiring of an attorney, without more, do **not** amount to reasonably anticipated litigation. Tex. Att'y Gen. ORD-331 (1982); ORD-361 (1983).

As of October 9, 2025:

• No new petition had been filed.
• TTUS identifies no formal pre-suit demand letter, no Tort Claims Act notice, no new administrative complaint, and no settlement demand objectively signaling imminent litigation on a specific claim.
• My contemporaneous actions were PIA and FERPA requests, a preservation notice expressly framed in § 552.004 and § 552.351 terms, and communications with your Office about non-acknowledgment.

Your Office's 2022 Public Information Handbook and recent rulings make clear that § 552.103 must be evaluated strictly **as of the date of the request**, and that later events cannot retroactively cure a lack of concrete evidence. See Tex. Att'y Gen., Public Information Handbook 2022 (litigation exception section); Tex. Att'y Gen. OR2022-12104 at 2-3.

If using the PIA as designed, insisting on statutory preservation of public information, and complaining to your Office about non-acknowledgment are treated as "concrete evidence" of litigation, then any requester who actively enforces the PIA automatically hands the governmental body a litigation shield for its PIA processing. That is incompatible with § 552.001's presumption of openness and with § 552.006's admonition that the PIA does not authorize withholding except as expressly provided by law. Tex. Gov't Code §§ 552.001, 552.006.

The Attorney General's training materials on "Common Discretionary Exceptions" likewise list as a **common error**: "Arguing litigation was pending but the litigation commenced after the request was received" and "Arguing the litigation was anticipated but the concrete steps that gave rise to that anticipation occurred after the request was received." That is exactly the move TTUS attempts here.

The Handbook also underscores that § 552.103 is temporal and limited:

• The exception ends when litigation is no longer pending or reasonably anticipated.
• It cannot be invoked based on events occurring after the date of the request.
• Once the opposing party has obtained the information through discovery or otherwise, § 552.103 no longer applies to that information.

See Tex. Att'y Gen. ORD-349 at 2 (1982); ORD-350 at 3 (1982); Att'y Gen. Op. MW-575 (1982); ORD-320 at 1 (1982); OR1999-3188.

Treating a nonsuited, concluded case as perpetual "pending" litigation for § 552.103 purposes, without post-nonsuit developments of the kind your Office normally requires, is inconsistent with that framework.

B. Social-Media Rhetoric Is Not "Concrete Evidence" of Reasonably Anticipated Litigation

The Brief puts heavy weight on selected posts on "X" in which I use advocacy language ("war for the truth," "suited up for another round," etc.).

But your Office's own decisions squarely address this scenario. They hold that if an individual publicly threatens to sue but does **not** take objective steps toward filing suit, litigation is **not** reasonably anticipated. Tex. Att'y Gen. ORD-331 (1982). Likewise, the fact that a potential opposing party has hired an attorney—or that an attorney has requested records under the PIA—does not, by itself, show litigation is reasonably anticipated. Tex. Att'y Gen. ORD-361 (1983); ORD-638 (1996).

A recent letter ruling applying § 552.103 confirms the point: in OR2022-12104, your Office held that even where the requestor later filed a grievance, the governmental body had not met § 552.103 because there was no concrete evidence that litigation was reasonably anticipated on the date the PIA request was received. That ruling explicitly reiterates the "concrete evidence" and "more than mere conjecture" requirements, and notes that public threats without objective steps, and the mere fact an attorney has been retained, are not enough.

My social-media commentary is advocacy and criticism, not a statutory notice, demand letter, or formal claim. TTUS points to no objective step I took, as of October 9, comparable to:

- a written demand from counsel threatening suit if claims were not resolved;
- an EEOC or TWC charge filing; or
- a formal pre-suit notice under a specific statute.

Converting public advocacy into "evidence" for restricting PIA access would turn § 552.103 into a speech-sensitive shield: the more a citizen talks about transparency or accountability, the easier it becomes for a governmental body to curtail access. That result is directly at odds with the Legislature's command that the PIA be construed in favor of disclosure. Tex. Gov't Code § 552.001.

C. Even If Some Litigation Were Reasonably Anticipated, TTUS Has Not Shown That All Exhibit D Records Are Covered

Even assuming for argument that TTUS could satisfy the first prong, it must still satisfy the second: that each category of withheld information "relates to" that litigation. Univ. of Tex. Law Sch., 958 S.W.2d at 481; Tex. Att'y Gen. ORD-551 at 4-5.

The AG Handbook and ORD-551 make clear that a governmental body must identify the issues in the litigation and explain how the information relates to those issues. See ORD-551 at 4-5; Public Information Handbook 2022 (litigation exception discussion).

The Brief's Exhibit D groupings do not distinguish between:

• core litigation strategy documents (pleading drafts, legal analysis, trial strategy); and
• routine PIA and FERPA processing records that would exist regardless of litigation, including:

- intake emails acknowledging my PIA requests;
- help-desk or ticketing entries;
- routing and assignment messages;
- search-term/hit-count reports;
- calendar entries to schedule PIA work;
- standard compliance checklists; and
- vendor acknowledgments.

My October 9 requests are explicitly targeted at these process records—"records sufficient to show" receipt, routing, logging, and similar mechanics—within a short timeframe. These records reflect TTUS's performance of its statutory duties under §§ 552.002, 552.004, 552.021, and 552.221-.228. They are not what § 552.103 was designed to protect (litigation playbooks or settlement strategy); they are the paper trail for whether TTUS is obeying the PIA itself.

This Office has explained that § 552.103 is meant to prevent circumvention of discovery rules, not to render PIA compliance itself opaque. See Tex. Att'y Gen. ORD-551 at 3-5; see also Thomas v. Cornyn, 71 S.W.3d 473, 487-88 (Tex. App.—Austin 2002, no pet.) (holding that a PIA mandamus is a statutory remedy and placing the burden on the governmental body to prove an exception). Texas courts likewise recognize that PIA access is independent of civil discovery. Tex. Gov't Code § 552.005.

If a governmental body can invoke § 552.103 to withhold basic PIA workflow—logging, routing, and search mechanics—whenever litigation is somewhere in the background, it becomes effectively impossible to scrutinize how agencies handle PIA requests in contentious matters. That result collides with § 552.001's policy and with the structural safeguards throughout the Act, including §§ 552.021, 552.221, 552.228, and 552.351.

At a minimum, your Office should:

1. separate "pure process" records (showing compliance with PIA and FERPA duties) from documents that truly embody litigation strategy; and

2. hold that those process records are not properly withheld under § 552.103, even if some related litigation exists or is anticipated.

III. TTUS Has Not Demonstrated That § 552.107 Covers All Withheld Communications

Section 552.107(1) protects confidential attorney-client communications made for the purpose of facilitating the rendition of professional legal services. Tex. Gov't Code § 552.107(1); Tex. R. Evid. 503(b)(1).

In the PIA context, a governmental body must show that the information at issue:

1. documents or constitutes a communication;
2. was made for the purpose of facilitating the rendition of professional legal services to the client governmental body;
3. is between or among the client, client representatives, lawyers, and lawyer representatives; and
4. was intended to be and has remained confidential.

See Tex. Att'y Gen. ORD-676 at 6-7 (2002); Huie v. DeShazo, 922 S.W.2d 920, 922-24 (Tex. 1996); In re XL Specialty Ins. Co., 373 S.W.3d 46, 49-50 (Tex. 2012).

The Brief largely asserts, in broad strokes, that any email involving TTUS OGC is "self-evidently" privileged and that everything in Exhibit D that includes counsel constitutes legal advice or a request for legal advice. That is not sufficient under ORD-676 or Rule 503.

A. Routine PIA Routing and IT/Administrative Messages Are Not Inherently Legal Advice

Communications such as "please open a ticket for this request," "run this search," "confirm receipt," "upload this to the PIA portal," or "here is the hit-count report" are operational, not legal. They do not necessarily convey legal advice or reveal legal mental impressions, and they would be generated even if TTUS never anticipated litigation.

TTUS must identify which communications are actually privileged legal exchanges as opposed to administrative implementation of the PIA. Copying OGC on an email does not automatically transform an internal tracking message into privileged legal strategy. See In re Tex. Farmers Ins. Exch., 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege applies only when lawyer is acting as a legal adviser).

B. Mixed-Purpose Threads Require Parsing What Is Actually Privileged

Many email threads combine:

- requests for legal advice;
- factual updates;

• scheduling and logistics; and
• internal technical coordination (e.g., data pulls and search reports).

Under ORD-676, if TTUS demonstrates that a particular communication is a confidential attorney-client communication made for the purpose of obtaining or providing legal advice, § 552.107 generally allows withholding of the entire communication. But TTUS still must show—for each withheld thread—that:

• it is a communication between proper parties under Rule 503;
• counsel is acting as legal adviser (not simply as an administrator); and
• the content consists of legal advice or is necessary to obtain legal advice, rather than pure reporting or logistics.

See Huie, 922 S.W.2d at 923-24; XL Specialty, 373 S.W.3d at 49-50; ORD-676 at 6-8.

Simply grouping whole threads into Exhibit D and labeling them “attorney-client” is not the granular showing that ORD-676 contemplates.

C. Attachments and Pre-Existing Documents Are Not Privileged Merely Because They Were Emailed to Counsel

Your Office distinguishes pre-existing documents that are not privileged in their own right from privileged communications that happen to transmit them. Emailing a transcript, policy, log, or report to OGC does not make the underlying document privileged. See ORD-676 at 4-6; Huie, 922 S.W.2d at 923-24.

TTUS should therefore be required to:

• identify any attachments or underlying documents within Exhibit D that pre-existed the attorney-client communication and are not themselves communications; and
• treat those attachments as independently subject to the PIA and its exceptions, rather than automatically cloaked by § 552.107.

I respectfully request that your Office require TTUS to particularize its § 552.107 claims: for each withheld category in Exhibit D, identify the attorney, the client representative, the legal purpose, and the basis for confidentiality, and ensure TTUS is not withholding non-privileged administrative records and pre-existing documents under the guise of attorney-client privilege.

IV. § 552.111 Does Not Shield Routine PIA and FERPA Implementation

Section 552.111 excepts from disclosure certain interagency or intra-agency memoranda or letters that would not be available by discovery in litigation, primarily those that reflect advice, opinion, or recommendation on policymaking matters. Tex. Gov’t Code § 552.111.

In ORD-615 (1993), after Texas Dep't of Pub. Safety v. Gilbreath, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), the Attorney General substantially narrowed this exception:

• § 552.111 covers internal communications consisting of advice, opinion, and recommendation on policymaking matters;
• it does not generally apply to routine internal administrative or personnel matters, even if those communications contain advice or opinions; and
• purely factual material is generally not protected.

See Tex. Att'y Gen. ORD-615 at 4-6 (1993); Austin v. City of San Antonio, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.); City of Garland v. Dallas Morning News, 22 S.W.3d 351, 364-65 (Tex. 2000); Arlington Indep. Sch. Dist. v. Tex. Att'y Gen., 37 S.W.3d 152, 160 (Tex. App.—Austin 2001, no pet.).

TTUS invokes § 552.111 "in the alternative" to § 552.107 for many of the same records, but my October 9 requests do not target high-level policy deliberations. They target particular, case-linked workflows:

• when and how my preservation notice was received, routed, and implemented;
• how my October 2-3 PIA requests were processed internally; and
• which custodians were notified and how searches were conducted during the short rolling window.

Those are implementation details and "housekeeping" about compliance with existing law and policy, not abstract policymaking. They fall squarely into the category of routine internal administrative matters that ORD-615 says are not shielded by § 552.111. See City of Garland, 22 S.W.3d at 364-65; Arlington I.S.D., 37 S.W.3d at 160-61.

To the extent any withheld documents truly concern high-level deliberation about TTUS-wide PIA or FERPA policy—such as draft system-wide policies or strategic proposals about future rules—§ 552.111 may apply in part. But even then:

• purely factual material in those documents is not protected and must be released; and
• final, adopted policies are not covered by the deliberative-process privilege and must be disclosed. See ORD-615 at 5-6; ORD-559 at 2-3 (1990); City of Garland, 22 S.W.3d at 364-65.

I therefore request that your Office:

1. reject TTUS's use of § 552.111 for routine PIA and FERPA implementation records (routing, logging, ticketing, search execution, vendor coordination); and
2. require release of purely factual information and final policies even if some portions of a document legitimately fall under § 552.111.

V. Policy, Special Right of Access, and Public Interest Favor Disclosure

The Legislature has directed that the PIA "shall be liberally construed in favor of granting a request for information" and that each person is entitled to "complete information" about government affairs and official acts, unless otherwise expressly provided by law. Tex. Gov't Code § 552.001(a), (b). Texas appellate courts repeatedly echo this principle, including in Thomas v. Cornyn and City of Fort Worth v. Cornyn, and the Supreme Court reinforced it in Greater Houston Partnership v. Paxton. See Thomas, 71 S.W.3d at 487-88; City of Fort Worth v. Cornyn, 86 S.W.3d 320, 327-28 (Tex. App.—Austin 2002, no pet.); Greater Hous. P'ship v. Paxton, 468 S.W.3d 51, 61-63 (Tex. 2015).

Two further points are important here.

A. Special Right of Access to Information About Me

Much of the requested material concerns my own education and disciplinary matters and how TTUS is handling records about me. Under Tex. Gov't Code § 552.023(a), I have a "special right of access, beyond the right of the general public," to information that relates to me and is protected only by privacy-based laws. Section 552.026 incorporates FERPA and ensures FERPA does not create a broader confidentiality shield than federal law itself.

While § 552.023 does not override all PIA exceptions—especially those that protect governmental interests, like § 552.103—it underscores the weight of my interest in records about me and cautions against expansive use of discretionary exceptions in this context.

B. Heightened Public Interest in How TTUS Handles PIA Requests and Student-Rights Controversies

There is strong public interest in:

• how a publicly funded medical school handles allegations of due process violations, professionalism proceedings, transcript holds, and campus access restrictions;
• whether TTUS and TTUHSC are meeting their obligations under §§ 552.002, 552.004, 552.021, and 552.221-.228 to promptly preserve and produce public information; and
• whether a large public university system uses discretionary exceptions (particularly § 552.103) to mask its own treatment of PIA requests and preservation demands from scrutiny.

The records at issue—logs, routing emails, internal acknowledgments, search mechanics, and other PIA-process artifacts—go directly to those questions. If those can be withheld wholesale under §§ 552.103, 552.107, and 552.111 whenever the requester is litigious or outspoken, the PIA's promise of "complete information" becomes selectively unavailable in precisely the cases where public oversight is most needed. See City of Fort Worth, 86 S.W.3d at 327-28.

VI. Requested Outcome

For the reasons above, I respectfully request that the Attorney General:

1. Decline to apply § 552.103 to:

• records showing TTUS/TTUHSC's receipt, acknowledgment, routing, logging, ticketing, and vendor acknowledgments for:

- my October 6 preservation notice; and
- my October 2-3 PIA/FERPA requests; and

• routine communications and artifacts generated in processing my October 9 requests themselves.

2. If § 552.103 is applied at all, limit it to true litigation-strategy material (if any) and require TTUS to segregate and release non-litigation process material, including PIA workflow and non-legal administrative handling.

3. Require TTUS to particularize and narrow its § 552.107 assertions, demonstrating for each withheld category:

• that the information constitutes or documents a confidential attorney-client communication;
• that counsel was acting as legal adviser rather than as a general administrator; and
• that any pre-existing attachments or non-communication materials are evaluated separately under the PIA and released unless independently excepted.

4. Reject § 552.111 as a basis to withhold routine PIA-processing and FERPA-implementation records and require TTUS to release:

• all purely factual process information; and
• any final policies or procedures governing its PIA and FERPA compliance.

5. Direct TTUS to produce responsive records promptly, consistent with Tex. Gov't Code §§ 552.021 and 552.228, in electronic format where available.

Thank you for your attention to these comments and for the Open Records Division's role in safeguarding the transparency promised by the Texas Public Information Act. Please let me know if anything further would be helpful.

Respectfully submitted,

Kevin Bass, PhD, MS
Requestor