

Paxton v. City of Dallas: Attorney-Client Privilege and Missed Deadlines Under the TPIA

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The TPIA establishes a presumption of access to government information but also carves out certain exceptions to the public-disclosure requirement, including an exception for information protected by attorney-client privilege. The statute also sets out a procedural system for governmental bodies seeking to withhold requested information to request a ruling from the Texas Attorney General's office.

Ordinarily, a governmental body seeking to withhold information requested under the TPIA must seek an Attorney General's ruling "no later than the tenth business day after the date of receiving the written request," and failure to do so renders the information presumptively subject to disclosure "unless there is a *compelling reason* to withhold the information."

Paxton v. City of Dallas involved a governmental body's failure to timely request Attorney General decisions when it sought to withhold information under the attorney-client privilege. The City of Dallas received two separate information requests, one relating to a landfill and one to a convention-center hotel. The City contended that at least some of the requested information was subject to the attorney-client privilege, but it did not seek an Attorney General's decision until after ten business days from its receipt of the requests.

Nevertheless, the City argued that it had a "compelling reason" to withhold the requested information, in part because disclosure of some of the requested information "would prejudice [its] bargaining position" for particular transactions. In both cases, the Attorney General issued a letter ruling rejecting the City's arguments, concluding that the TPIA required disclosure of the requested information because the City's request for ruling was submitted after the applicable deadlines.

In a 7-2 decision, the Supreme Court held that the fact that the requested public information was covered by the attorney-client privilege—a fact that was undisputed—itsself satisfied the "compelling reason" burden under the TPIA. Justice Eva Guzman, writing for the majority, noted the importance of protecting the attorney-client privilege in promoting full and frank communications between government attorneys and policymakers. As a result, Justice Guzman wrote, "[d]epriving the privilege of its force...compromises the public's interest at both discrete and systemic levels."

In dissent, Justice Jeff Boyd argued that, "[u]nder the Court's holding, establishing the exception will always constitute a compelling reason...obliterat[ing] the sole method by which the Act compels the government to timely and properly assert the attorney-client privilege." He defended the TPIA's approach to reconciling the competing interests of disclosure and privilege, noting that by allowing the government to promptly assert its privileges and request an Attorney General decision, the TPIA allows for effective case-by-case balancing of the public's interest in disclosure and any resulting harm that could occur. Justice Boyd "conclude[d] that a 'compelling reason' is one that is so important and urgent that reasonable minds can only conclude that it clearly outweighs the Act's fundamental policy of ensuring that the public can promptly obtain public information from its governmental bodies," and that, in his view, the City failed to make such a showing.

By focusing on the nature of the requested information, rather than the governmental body's reasons for missing the deadlines, the Supreme Court has called into question the significance of the TPIA's deadlines and the consequences a governmental body may face if it misses a deadline. If the nature of the requested information can itself satisfy the "compelling reason" to withhold it, notwithstanding the governmental body's failure to comply with the TPIA's procedural requirements, then the Supreme Court's ruling threatens to create a loophole around the Act's prescribed approach to balancing the competing interests of *prompt* access to public information and confidentiality.