

**Open Records Ruling Tracking Sheet**

*mtt*

|                                  |                                 |                            |
|----------------------------------|---------------------------------|----------------------------|
| <b>File Number:</b> OR-838735-20 | Issued as: <i>21005</i>         | Assigned To: <i>Triage</i> |
| ID#: 838735                      | Date issued: <b>AUG 20 2020</b> | Date assigned: 06/09/2020  |

Addressee: June B. Harden  
 Entity: Attorney General's Office  
 Gov't Body: Attorney General's Office  
 Entity's Phone #: ( ) -  
 Entity's fax #: ( ) -  
 Requestor: Joseph R. Larson  
 Requestor's Phone#: ( ) -  
 Requestor's fax #: ( ) -

Date received: 06/03/2020  
 Postmark Date:  
**45-day deadline: 08/06/2020**  
 55-day deadline: 08/20/2020  
 15-day deadline: 06/10/2020 Late:   
 10-day deadline: 06/03/2020 Late:   
 10-day ltr.sent: **AUG 06 2020**  
 Ack. sent:  
 7-day ltr. sent:  
 7-day ltr. due:  
 305 briefs due:

Confidential

Press Office:

Description:  
 JAW9: *AG on 05/13/20 re withholding comms re Natin Paul, World*  
 Class 1

Attach

RV2  
 Y/N  
 Y/N

*Opinions*

| EZ Due     | Date | sue? (Inits) |
|------------|------|--------------|
| 06/15/2020 |      |              |
|            |      |              |
|            |      |              |
|            |      |              |

**Scanned**

lose: \_\_\_\_\_  
 initials/date

Signed: \_\_\_\_\_ Initials: \_\_\_\_\_ Date: \_\_\_\_\_  
 Docs returned by mail on: **AUG 20 2020** by: *JM*

Executive Approval: \_\_\_\_\_  
 initials/date

Exception: \_\_\_\_\_

**Open Records Ruling Tracking Sheet**

*MH 12*

|                                  |                                 |                           |
|----------------------------------|---------------------------------|---------------------------|
| File Number: <b>OR-838735-20</b> | Issued as: <i>21005</i>         | Assigned To: <i>T/age</i> |
| ID#: 838735                      | Date issued: <b>AUG 20 2020</b> | Date assigned: 06/09/2020 |

Addressee: June B. Harden Date received: 06/03/2020  
 Entity: Attorney General's Office Postmark Date:  
 Gov't Body: Attorney General's Office **45-day deadline: 08/06/2020**  
 Entity's Phone #: ( ) - 55-day deadline: 08/20/2020  
 Entity's fax #: ( ) - 15-day deadline: 06/10/2020 Late:   
 Requestor: Joseph R. Larson Confidential  10-day deadline: 06/03/2020 Late:   
 Requestor's Phone#: ( ) - 10-day ltr sent: **AUG 06 2020**  
 Requestor's fax #: ( ) - Ack. sent:  
7-day ltr. sent:  
7-day ltr. due:  
305 briefs due:  
 Press Office:

Description:  
 JAW9: Request for copy of FBI comments to the AG on 05/13/20 re withholding comms re Natin Paul, World Class Holdings, [REDACTED] (R004417) docs.

Attachments: *8/12/20*

| RV2 | Drafter | Initials   | Draft Due  | Simple Due | EZ Due     | Date Complete | RV Con | Re-Route | Issue? (Inits) |
|-----|---------|------------|------------|------------|------------|---------------|--------|----------|----------------|
| Y/N | RV 1    | <i>MHM</i> | 07/16/2020 | 06/23/2020 | 06/15/2020 | _____         | Y/N    | Y/N      | _____          |
| Y/N | RV 2    | _____      | _____      | _____      | _____      | _____         | Y/N    | Y/N      | _____          |
|     |         | _____      | _____      | _____      | _____      | _____         | Y/N    | Y/N      | _____          |

Ready to Close: \_\_\_\_\_  
initials/date

Signed: \_\_\_\_\_ Initials: \_\_\_\_\_ Date: \_\_\_\_\_  
 Docs returned by mail on: **AUG 20 2020** by: *JM*

Executive Approval: \_\_\_\_\_  
initials/date

Exception: \_\_\_\_\_



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 20, 2020

Ms. June B. Harden  
Assistant Attorney General  
Assistant Public Information Coordinator  
Office of the Attorney General  
Post Office Box 12548  
Austin, TX 78711-2548

OR2020-21005

Dear Ms. Harden:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. This request was originally received by the Open Records Division of this office and assigned ID #838735. Preparation of the ruling has been assigned to the Opinion Committee of this office.

The Office of the Attorney General (the "OAG") received a brief dated May 13, 2020, submitted by the Federal Bureau of Investigation (the "FBI") asserting that certain communications and information involved in a particular request for information should not be disclosed under subsections 552.108(a)(1) and (2) of the Government Code. The brief recites that a redacted copy was provided to Mr. Joseph Larsen.

You tell us that on May 19, 2020, the OAG received a request from Mr. Joseph Larsen for an unredacted copy of the May 13, 2020 brief. On June 3, 2020, the OAG submitted this request for a decision to give the FBI the opportunity to submit any arguments it may have against the release of its briefing. You explain that the May 13, 2020 brief was submitted under section 552.304 of the Act, and that the "FBI informed this office that it intends to submit arguments to withhold its submission." *See* TEX. GOV'T CODE § 552.304. You tell us the OAG takes no position on any argued exception and requests a decision "regarding the applicability of any argued exceptions as provided by the PIA."

On June 18, 2020, the OAG received a second brief from the FBI reasserting arguments why the communications and information in the underlying request should not be disclosed. However, although it references the OAG's letter of June 3, 2020, it does not present arguments against disclosure of any portion of its May 13, 2020 submission.

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HGIC\_SUB-00049954

HBOM00055629

AG Exhibit 0034

We have reviewed the information you submitted under the tab marked "Exhibit B," which is the unredacted brief submitted under section 552.304 of the Government Code. Subsection 552.304(b) provides:

(b) A person who submits written comments to the attorney general under Subsection (a) shall send a copy of those comments to both the person who requested the information from the governmental body and the governmental body. If the written comments submitted to the attorney general disclose or contain the substance of the information requested from the governmental body, the copy of the comments sent to the person who requested the information must be a redacted copy.

TEX. GOV'T CODE § 552.304(b). Without comments explaining why all or part of the May 13, 2020 submission should not be disclosed, we have no basis to conclude whether any written comments in the submission "disclose or contain the substance of the information requested." *Id.* Accordingly, the OAG may not withhold the May 13, 2020 submission on the basis of subsection 552.304(b) or any other unargued exception.

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,

William A. Hill  
Assistant Attorney General  
Opinion Committee

WH/jm

Ref: ID# 838735

c: Requestor

Third Party



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 6, 2020

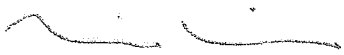
Ms. June B. Harden  
Assistant Attorney General  
Assistant Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

Dear Ms. Harden:

Pursuant to section 552.306 of the Government Code, the attorney general must issue a written opinion within forty-five working days from the date the attorney general receives a request for an open records decision. The attorney general may extend the period for issuing the decision by an additional ten working days by informing the governmental body and the requestor of the reason for the delay. Gov't Code § 552.306.

In the process of researching your open records request, identified as ID#838735, we have concluded that we require additional time to research the legal issues raised by your request for an open records decision. We will notify you of our ruling regarding your request as expeditiously as possible.

Sincerely,

  
Melanie Villars  
Assistant Attorney General  
Open Records Division

MJV/jm

Ref: ID# 838735

Enc. First page of letter

c: Requestor  
(w/enclosure)

Third Party  
(w/enclosure)

Post Office Box 12548, Austin, Texas 78711-2548 • (512) 463-2100 • [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov)

CONFIDENTIAL

HGIC\_SUB-00049956

HBOM00055631

AG Exhibit 0034

REF: ID # 838735

JOSEPH R LARSON  
GREGOR WYNNE ARNEY PLLC  
700 LOUISIANA ST STE 3950  
HOUSTON TX 77002

MATTHEW J MCPHILLIPS  
CHIEF DIVISION COUNSEL  
FBI-SAN ANTONIO DIVISION  
5740 UNIVERSITY HEIGHTS BLVD  
SAN ANTONIO TX 78249

REF: ID # 838735

JOSEPH R LARSON  
GREGOR WYNNE ARNEY PLLC  
700 LOUISIANA ST STE 3950  
HOUSTON TX 77002

MATTHEW J MCPHILLIPS  
CHIEF DIVISION COUNSEL  
FBI SAN ANTONIO DIVISION  
5740 UNIVERSITY HEIGHTS BLVD  
SAN ANTONIO TX 78249

**STATUS SHEET**

08/20/2020

**Mail Id number:** 841216  
**File number:** OR-838735-20  
**ORQ:**  
**Date Written:** 06/09/2020  
**Date Received:** 06/18/2020  
**Date Acknowledge:**  
**Date File Opened:** 06/09/2020  
**Date ORQ Opened:** 00/00/0000  
**Assign To:** OPN  
**Status:** CLOSED  
**Sub\_Status:** ORL  
**Status Date:** 08/20/2020  
**Issued as:** OR20-21005  
**Billing Code:** AGCY0302  
**Billing Name:** Attorney General's Office  
**Planned Response:** ORL

**Last Name:** Harden  
**First Name:** June B.  
**Title:** Asst. AG  
**Entity:** ATTORNEY GENERAL'S OFFICE  
**Address:** P.O. Box 12548

**City:** Austin  
**State:** TX  
**Zip Code:** 78711-2548

**Cross Reference:**  
**Routed to:**  
**Routed On:** 08/20/2020

**Description:** CNG2: RE: ID # 838735

**Legal Issue:** 08/06/20 10 DAY LET JLBM

**Edit Comments:** 08/06/20 10 DAY LET JLBM

**Exceptions:**



## Bega, Liz

---

**From:** Hoelscher, Jennie  
**Sent:** Wednesday, August 19, 2020 8:55 AM  
**To:** Montoya, Stephanie  
**Cc:** Martinez, Steven; Bega, Liz; Harper, Charlotte; Hill, William  
**Subject:** RE: ORD Ruling Request ID# OR-838735-20 (45 Day: 08/06/20)  
**Attachments:** ID# OR-838735-20.docx

Steph,

Attached is a final draft ruling, ready for issuance.

Jennie Hoelscher  
Division Chief, Opinions  
Office of the Attorney General

---

**From:** Montoya, Stephanie <Stephanie.Montoya@oag.texas.gov>  
**Sent:** Friday, July 24, 2020 3:35 PM  
**To:** Hoelscher, Jennie <Jennie.Hoelscher@oag.texas.gov>; Harper, Charlotte <Charlotte.Harper@oag.texas.gov>  
**Cc:** Martinez, Steven <Steven.Martinez@oag.texas.gov>; Bega, Liz <Liz.Bega@oag.texas.gov>  
**Subject:** RE: ORD Ruling Request ID# OR-838735-20 (45 Day: 08/06/20)

Jennie,

Here is the scanned file.

Have a great weekend!

Steph

---

**From:** Hoelscher, Jennie <Jennie.Hoelscher@oag.texas.gov>  
**Sent:** Friday, July 24, 2020 9:23 AM  
**To:** Montoya, Stephanie <Stephanie.Montoya@oag.texas.gov>; Harper, Charlotte <Charlotte.Harper@oag.texas.gov>  
**Cc:** Martinez, Steven <Steven.Martinez@oag.texas.gov>; Bega, Liz <Liz.Bega@oag.texas.gov>  
**Subject:** RE: ORD Ruling Request ID# OR-838735-20 (45 Day: 08/06/20)

Opinions will handle. Scanning would be great, Steph. Thank you!

Jennie

---

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Good Afternoon,

ORD ruling request ID# OR-838735-20 (45-day: 08/06/2020) has ORD documents at issue. We request to transfer this request to Opinions for handling.

Because we are in Phase II and a lot of us are telecommuting, I can scan this file and get it to you, if approved.

Thanks,  
Steph

**Villars, Melanie**

---

**From:** Montoya, Stephanie  
**Sent:** Wednesday, August 19, 2020 8:56 AM  
**To:** Villars, Melanie  
**Subject:** FW: ORD Ruling Request ID# OR-838735-20 (45 Day: 08/06/20)  
**Attachments:** ID# OR-838735-20.docx

The Opinions file is ready to be issued.

---

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Jennie Hoelscher  
Division Chief, Opinions  
Office of the Attorney General

*This is  
the approval  
email for  
OPINIONS TAG*

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Thanks,  
Steph

August 19, 2020

Ms. June B. Harden  
Assistant Attorney General  
Assistant Public Information Coordinator  
Office of the Attorney General  
Post Office Box 12548  
Austin, TX 78711-2548

OR2020-xxxxx

Dear Ms. Harden:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. This request was originally received by the Open Records Division of this office and assigned ID #838735. Preparation of the ruling has been assigned to the Opinion Committee of this office.

The Office of the Attorney General (the "OAG") received a brief dated May 13, 2020, submitted by the Federal Bureau of Investigation (the "FBI") asserting that certain communications and information involved in a particular request for information should not be disclosed under subsections 552.108(a)(1) and (2) of the Government Code. The brief recites that a redacted copy was provided to Mr. Joseph Larsen.

You tell us that on May 19, 2020, the OAG received a request from Mr. Joseph Larsen for an unredacted copy of the May 13, 2020 brief. On June 3, 2020, the OAG submitted this request for a decision to give the FBI the opportunity to submit any arguments it may have against the release of its briefing. You explain that the May 13, 2020 brief was submitted under section 552.304 of the Act, and that the "FBI informed this office that it intends to submit arguments to withhold its submission." *See* TEX. GOV'T CODE § 552.304. You tell us the OAG takes no position on any argued exception and requests a decision "regarding the applicability of any argued exceptions as provided by the PIA."

On June 18, 2020, the OAG received a second brief from the FBI reasserting arguments why the communications and information in the underlying request should not be disclosed. However, although it references the OAG's letter of June 3, 2020, it does not present arguments against disclosure of any portion of its May 13, 2020 submission.

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HGIC\_SUB-00049965

HBOM00055640

AG Exhibit 0034

We have reviewed the information you submitted under the tab marked “Exhibit B,” which is the unredacted brief submitted under section 552.304 of the Government Code. Subsection 552.304(b) provides:

(b) A person who submits written comments to the attorney general under Subsection (a) shall send a copy of those comments to both the person who requested the information from the governmental body and the governmental body. If the written comments submitted to the attorney general disclose or contain the substance of the information requested from the governmental body, the copy of the comments sent to the person who requested the information must be a redacted copy.

TEX. GOV'T CODE § 552.304(b). Without comments explaining why all or part of the May 13, 2020 submission should not be disclosed, we have no basis to conclude whether any written comments in the submission “disclose or contain the substance of the information requested.” *Id.* Accordingly, the OAG may not withhold the May 13, 2020 submission on the basis of subsection 552.304(b) or any other unargued exception.

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/opengovernment/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 Act may be directed to the OAG, toll free, at (888) 672-6787.

Sincerely,

William A. Hill  
Assistant Attorney General  
Opinion Committee

Ref: ID# 838735

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

OR 838735.20  
838735

Received by Open Records

JUN 03 2020

June 3, 2020

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

Re: Public Information Request No. R004417

Dear Mr. Gordon:

On May 19, 2020, the Office of the Attorney General (the "OAG") received a public information request under the Public Information Act (the "PIA"), Chapter 552, Government Code, from Mr. Joseph Larsen. A copy of the request is attached as Exhibit A.

The requestor seeks an unredacted copy of a brief submitted by the Federal Bureau of Investigation (the "FBI") to the Open Records Division under section 552.304 of the Government Code. The FBI has informed this office that it intends to submit arguments to withhold its submission.

The OAG is submitting this request for a decision to give the FBI the opportunity to submit any arguments it may have against the release of its briefing. *See* Gov't Code § 552.304 (providing that any interested party may submit arguments explaining why requested information should or should not be released). The OAG takes no position on the applicability of any asserted exception. The information at issue is attached as Exhibit B.

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

Please do not hesitate to contact me at (512) 475-4558 if you have questions or require additional information.

Sincerely,

*LEC FOR JUNE HARDEN*

June B. Harden  
Assistant Attorney General  
Assistant Public Information Coordinator  
Office of the Attorney General

Post Office Box 12548, Austin, Texas 78711-2548 • (512) 463-2100 • [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov)

CONFIDENTIAL

HGIC\_SUB-00049967

HBOM00055642

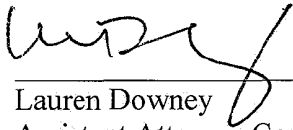
AG Exhibit 0034



c: Mr. Joseph Larsen  
Gregor Wynne Arney, PLLC  
700 Louisiana St., Ste. 3950  
Houston, TX 77002  
(w/o enclosures)

Mr. Matthew J. McPhillips  
Chief Division Counsel  
Federal Bureau of Investigation-San Antonio Division  
5740 University Heights Blvd.  
San Antonio, TX 78249  
(w/o enclosures)

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 June 3, 2020.



---

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

# EXHIBIT A

CONFIDENTIAL

HGIC\_SUB-00049970

HBOM00055645

AG Exhibit 0034

**publicrecords**

---

**From:** Joseph Larsen <jlarsen@gcfirm.com>  
**Sent:** Tuesday, May 19, 2020 12:14 AM  
**To:** publicrecords  
**Cc:** OGC Webmaster; McPhillips, Matthew J. (SA) (FBI); Gordon, Justin; Hartley, Ann  
**Subject:** Public Information Act request and supporting legal brief  
**Attachments:** 05 18 20 PIA Request for and Legal Brief on obtaining copy of FBI comments wo redactions.pdf  
**Categories:** Printed

Dear Officer for Public Information—

Please see attached Public Information Request and legal brief in support thereof for immediate release of unredacted copy of comments submitted by the FBI to the attorney general on May 13, 2020.

Joseph R. Larsen  
GREGOR | WYNNE | ARNEY, PLLC  
Bank of America Center  
700 Louisiana, Suite 3950  
Houston, Texas 77002  
(713) 306-1937 – Direct  
(832) 390-2644 – Office  
(832) 390-2655 – Fax  
jlarsen@gcfirm.com  
www.gcfirm.com

# GREGOR | WYNNE | ARNEY, PLLC

JOSEPH R. LARSEN  
DIRECT LINE: (713)306-1937  
E-MAIL: [JLARSEN@GRFIRM.COM](mailto:JLARSEN@GRFIRM.COM)

May 18, 2020

Office for Public Information  
Attorney General of Texas  
209 West 14th Street, 6th Floor  
Austin, Texas 78701

*Via Email*

RE: Public Information Request and legal brief in support thereof for immediate release of unredacted copy of comments submitted by the FBI to the attorney general on May 13, 2020.

Dear Officer for Public Information—

Pursuant to the Texas Public Information Act (“PIA”), I hereby request immediate release, in compliance with the applicable statutes, of an unredacted copy of comments submitted by the FBI to the attorney general on May 13, 2020. The FBI’s comments were submitted in connection with the Texas Department of Public Safety’s (“DPS”) request for ruling dated March 13, 2020 to withhold information responsive to my PIA request for all communications regarding

Natin “Nate Paul, World Class Holdings, World Class Capital Group and/or affiliated companies and all communications regarding or referencing [REDACTED] [REDACTED] Austin, TX 78735.

A redacted copy of the FBI’s comments is attached for reference as *Exhibit A*. There is no statutory authority for the FBI to redact its legal arguments, and the FBI’s and DPS’s blatant disregard of their obligations under the PIA should result in release of the full comments with no redactions, but at a minimum, with substantially fewer redactions.

### ***Procedural History and Applicable Statutes***

The FBI, like any other person, may submit written comments stating reasons why the information at issue in a request for an attorney general decision should or should not be released. Tex. Gov’t Code § 552.304(a). If the comments “disclose or contain the substance of the information requested from the governmental body, the copy of the comments sent to the person who requested the information must be a redacted copy.” § 552.304(b) (emphasis added). On its face, the FBI’s five completely redacted pages include not only the substance of the information requested, but also the FBI’s legal arguments and reasoning and facts pertinent to proving applicability of the claimed exception that don’t disclose the substance of the information at issue, including basic information, which must always be disclosed. The FBI’s action in redacting the entirety of its comments subverts the statutory requirement that the requestor receive a copy of the comments

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AG Exhibit 0034

and makes it impossible for the requestor to respond to the comments, literally having no idea what they are.

Further, however, the FBI's submission of comments is not pursuant to § 552.304, but purportedly under § 552.305. In this connection, DPS provided notice to the FBI's Chief Division Counsel May 5, 2020 that information responsive to my PIA request includes "records we received from you or from your entity." See *Exhibit B*, p. 1. DPS's notice also included the following paragraph advising the FBI that:

**In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General.** Gov't Code §552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Gov't Code §552.305(e).

*Exhibit B*, p. 2. (emphasis in original). DPS's notice further gave notice to the FBI, under the heading "Commonly Raised Exceptions," that

In order for a *governmental body* to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may result in the release of requested information. We have listed the most commonly claimed exceptions in the Government Code concerning *proprietary* information and the leading cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

*Id.* (emphasis added). The referenced provision, 552.305 (e), states that

A person who submits a letter, memorandum, or brief to the attorney general under Subsection (d) shall send a copy of that letter, memorandum, or brief to the person who requested the information from the governmental body. If the letter, memorandum, or brief submitted to the attorney general *contains the substance of the information requested, the copy of the letter, memorandum, or brief may be a redacted copy.*

*Id.* (emphasis added). This language also prohibits redacting any more than necessary to not reveal the substance of the information at issue. That said, the information at issue is not "proprietary" to the FBI at all, and it falls within the definition of public information. Tex. Gov't Code § 552.002(a). See also § 552.233(a)(officeholders have no ownership interest).

Finally, § 552.301(e-1) allows a governmental body to submit comments in favor of withholding the information, which DPS did here, and it also requires the governmental body to

send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request. *If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy* (emphasis added).

Further regarding governmental bodies, as set out in § 552.302:

If a governmental body does not request an attorney general decision as provided by Section 552.301 *and provide the requestor with the information required by Sections 552.301(d) and (e-1)*, the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information (emphasis added).

The plain language of this statute is amplified in the 2020 PIA Handbook, p. 40 where the attorney general sets out that

*Governmental bodies are cautioned against redacting more than that which would reveal the substance of the information requested from the comments sent to the requestor. A failure to comply with the requirements of section 552.301 can result in the information being presumed public under section 552.302 of the Government Code.*

Attorney General PIA Handbook excerpt attached hereto as *Exhibit C* (emphasis added).

While sent under the statute and in the applicable to notice to a person whose privacy or proprietary interests are at issue pursuant to § 552.305(d), DPS's notice explicitly refers to the FBI as a "governmental body." Further, virtually the only part of the comments that are unredacted states that the FBI is seeking withholding of the information in "compliance with section 552.108 of the Government Code . . . ." This is the "law enforcement" exception, not a proprietary interest, and it is not even among the statutes listed in § 552.305(d). It is the same exception claimed by DPS, and the FBI is merely acting here as a cat's paw for DPS to make its argument through the FBI but without revealing the specific legal argument at issue.

### ***Conclusion***

Under no circumstances can the FBI or any other person submit comments to the attorney general and conceal from the requestor its legal arguments and reasoning, and pertinent facts not at issue in the underlying request, which would include basic information. Despite the plain language of the applicable statutes, this fundamental requirement is repeatedly ignored by governmental bodies without any consequence. The FBI is acting here as a governmental body with only a fiction of a distinct interest from that of DPS on whose behalf it is acting, and the full unredacted comments should be presumed public and released promptly on the grounds of violation of § 552.302. At a minimum, the attorney general must promptly release the FBI's comments with the minimum redactions necessary to protect the information at issue in DPS's request for ruling.

To do otherwise is to accept that governmental bodies may hide behind a procedural process that assumes good faith while blatantly abusing the requirements of the PIA. If these statutes mean anything at all, they must be enforced when enforcement can still matter.

Sincerely,

GREGOR | WYNNE | ARNEY, PLLC

By: Joseph R. Larsen  
Joseph R. Larsen

cc: M.L. Calcote, Assistant General Counsel, DPS  
Matthew J. McPhillips, Chief Division Counsel, FBI  
Justin Gordon, Chief, Attorney General Open Records Division  
Ann Hartley, Counsel, DPS



# EXHIBIT B

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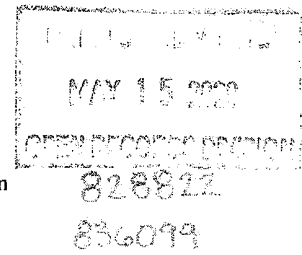
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AG Exhibit 0034



U.S. Department of Justice  
Federal Bureau of Investigation



In Reply, Please Refer to  
File No.

San Antonio Division  
5740 University Heights Boulevard  
San Antonio, Texas 78249  
May 13, 2020

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

RE: Public Information Request: Communications Regarding Natin "Nate" Paul, World Class Holdings, World Class Capital Group, and [REDACTED] Austin, TX 78735 (PIR #20-0983).

Dear Sir or Madame:

The San Antonio Division of the Federal Bureau of Investigation (FBI) has been advised of an open records request submitted to the Texas Department of Public Safety (DPS). Records responsive to that request includes records involving the FBI. We are in receipt of a letter dated May 5, 2020 from DPS formally notifying us about the open record request referenced above.

The FBI asserts that all records responsive to the request should be excepted from required public disclosure under Chapter 552 of the Texas Government Code. In compliance with section 552.108 of the Government Code (*Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information*), the FBI requests an Attorney General decision and provides the following information for your review and consideration.

Pursuant to section 552.108 of the Government Code, information held by a law enforcement agency may be excepted from public disclosure if "*release of the information would interfere with the detection, investigation, or prosecution of crime*" or if "it is information that *deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.*" Gov't Code §552.108(a)(1) and (2) (emphasis added).

Moreover, section 552.108(b) also states "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

- (1) release of the internal record or notation *would interfere with law enforcement or prosecution;*

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(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; ...”

Gov’t Code §552.108(b)(1) and (2) (emphasis added).

As of the date of this letter, the FBI’s Austin office is conducting an active investigation concerning World Class Capital. In August of 2019, the FBI executed federal search warrants in this investigation which resulted in media attention. No one has been charged in this investigation and it remains pending. As a result, any disclosure of FBI material in an active investigation would interfere with the detection or investigation of criminal activity. This is precisely the basis for which material may be excepted from public disclosure. *See* Tex. Atty. Gen. Op., ORD-127 (1976) (Withholding an arson investigation that was pending and under investigation, and no prosecutive decision had been made); *See also* Tex. Atty. Gen. Op., ORD-613 (1992) (DPS withheld intoxilyzer test results from public disclosure for pending criminal investigations and prosecutions).

The FBI routinely works with its federal, state and local law enforcement partners to conduct criminal and national security investigations. We have multiple task forces throughout Texas whose purpose is to work together to address various types of crime including, but not limited to, gangs, violent crime, white collar crime, terrorism, and narcotics trafficking. The World Class Capital investigation is being conducted by our Austin office. The FBI task force that is conducting this investigation includes representatives from DPS who were deputized as federal agents at the time of the August 2019 search warrant operation. The task force officers from DPS were acting in their capacity as federally deputized officers working on a sensitive federal investigation using federal authorities when the search warrant operation occurred. The investigation and search warrant operation were conducted in concert with federal prosecutors from the U.S. Attorney’s Office in Austin.

#### **Responsive Records**

DPS provided the FBI with responsive records to the open record request at issue. In total, there are six (6) e-mail communications involving DPS task force officers using their “dps.texas.gov” e-mail addresses, not their FBI-issued e-mail address. Some of these e-mail records contain sensitive attachments related to legal process and law enforcement sensitive operations. Some of these e-mails were sent to DPS management for awareness purposes prior to the August 2019 operation. The FBI deems all of these e-mail records law enforcement sensitive and should not be disclosed. The following is a description of the six responsive records.

##### **I. E-mail Dated August 12, 2019 (“Subject: 8-14-19 SW op”)**

This is an e-mail from the lead FBI investigator (Special Agent [REDACTED]) to all FBI and task force officer personnel participating in the August 2019 federal search warrant operation. It should not be disclosed. This e-mail contains three attachments as follows:

1. **A Law Enforcement Operations Order.** This document is considered “law enforcement sensitive” and has a legal caveat at the bottom of the first page that states:

*“(U) LAW ENFORCEMENT SENSITIVE: The information marked (U//LES) in this document is the property of the Federal Bureau of Investigation and may be distributed within the Federal Government (and its contractors), U.S. intelligence, law enforcement, public safety or protection officials and individuals with a need to know. Distribution beyond these entities without Federal Bureau of Investigation authorization is prohibited. Precautions should be taken to ensure this information is stored and/or destroyed in a manner that precludes unauthorized access. Information bearing the LES caveat may not be used in legal proceedings without first receiving authorization from the originating agency. Recipients are prohibited from subsequently posting the information marked LES on a website on an unclassified network without first obtaining FBI approval.”*

This record provides sensitive, detailed information concerning law enforcement operations. This attachment contains the identities of law enforcement personnel, their cell phone numbers, tactics and strategic information, personally identifiable information (PII), photographs, and how law enforcement prepares in advance of an operation. This sensitive record and premature disclosure to the requestor would inhibit the investigation by providing a preview of information possessed by investigators prior to any criminal charges being filed. This record is ordinarily disclosed to counsel during criminal discovery only after formal charges have been brought.

2. **Attachment B.** This document is the list of items investigators were authorized to seize during the August of 2019 search warrant. This document is similarly sensitive and should not be disclosed.
3. **Sealed Affidavit.** This document is the affidavit prepared by an FBI task force officer which provided the probable cause for a U.S. Magistrate to authorize the search warrant. This document is currently “*under seal*” and has not been released to anyone. It is extremely sensitive and provides a roadmap of the investigation including details as to the government’s investigative steps, legal process, and confidential information. Since no one has been charged in this pending investigation, this affidavit remains sealed. It should not be disclosed.

**II. E-mail Dated August 12, 2019 (“Subject: \*\*\*CID Confidential\*\*\*FBI Search Warrant (Team 3) on 9/14”)**

This is an e-mail from a DPS task force officer (██████████) believed to be sent to other DPS officials who aided the FBI in this search warrant operation. The e-mail contains a legal caveat at the bottom that states *“This communication may be confidential and/or privileged pursuant to relevant law, including Government Code Sections 552.352, 552.101 and 552.111 and should not be disclosed without the express authorization of the Texas Department of Public Safety.”* While this caveat notes the express permission of the Texas DPS, the DPS task force officer who sent it was a federally deputized FBI task force officer acting under federal authority. This e-mail also includes an attachment which is the 51-page “Law Enforcement Operations Order” described above which contains very sensitive information. It does not appear that the two individuals who received the e-mail – Timothy Johnston and Zachary Schindler – are FBI task force officers but are rather likely DPS officials who provided assistance. This e-mail record should not be disclosed.

**III. E-mail Dated August 15, 2019 (“Subject: Fwd: 1:19-MJ-431 search warrant applications (6) filed today – attached”)**

This record is an e-mail sent by an FBI task force officer (██████████) to another FBI task force officer from DPS (██████████). The e-mail chain contained sealed federal court documents originating from the U.S. Court office. The documents in the 244-page attachment (19MJ431.pdf) include sealed search warrants filed in federal court, a motion to seal the search warrant applications and search warrant, a signed court order to seal the search warrant applications and search warrant signed by a U.S. Magistrate Judge, and the supporting affidavit which provides sensitive and confidential details about the investigation. These records were forwarded by the supervising Assistant United States Attorney to the FBI investigators leading the investigation. The intent was to share it with the investigative team for purposes of the operation, not prematurely disclose it in an open record request simply because it was located on a DPS e-mail server. This was a federal investigation worked under federal authorities with state task force officers. This e-mail and its attachment are sealed federal court records and should not be disclosed in this open record request.

**IV. E-mail Dated October 15, 2019 (No Subject)**

This record is an e-mail from an FBI task force officer (██████████) to another FBI task force officer from DPS (██████████). This e-mail contains the same 244-page attachment (19MJ431.pdf) which includes several sensitive, sealed federal court documents related to the search warrant operation in August of 2019. This e-mail record and its attachment should not be disclosed in this open record request.

**V. E-mail Dated August 15, 2019 (“Subject: Re: Staging Area Team #3”)**

This record is an e-mail from an FBI employee to a group of other investigators which included a DPS task force officer using his dps.texas.gov e-mail address. The e-mail string

originated from the team leader of search team #3 and discussed a staging location and the location of a piece of evidence. This is an internal deliberative record not intended to have been disclosed prematurely to people outside of law enforcement. It provides details on how law enforcement plans an operation. The record also discusses a sensitive issue with respect to the need to keep digital evidence powered on until a lawful forensic examination could be conducted. This e-mail record should not be disclosed.

VI. E-mail Dated August 12, 2019 (“Subject: Search Warrant Assistance FBI Austin”)

This record is an e-mail sent from a DPS task force officer ( [REDACTED] ) using his dps.texas.gov e-mail address believed to be directed to his management at DPS. This record is a law enforcement sensitive record that highlights the collaboration between state and federal law enforcement. The DPS task force officer who sent the e-mail was acting in his capacity as a federally deputized task force officer under federal authorities. He was simply notifying his chain of command of an impending operation of which he was a participant. This record is similarly connected to other records involving a sensitive, non-public federal investigation.

**Application**

The six e-mail records cited above are federal records that originated from DPS task force officers acting in their official *federal* capacity concerning a federally supervised and led criminal investigation. Section 552.108 of the Texas Government Code permits restriction of information held by a law enforcement agency if “release of the information would interfere with the detection, investigation, or prosecution of crime” or if “*it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.*” Gov’t Code §552.108(a)(1) and (2) (emphasis added). Section 552.108(b) also states “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for *internal use in matters relating to law enforcement or prosecution* is excepted from the requirements of Section 552.021 if:

- (1) release of the internal record or notation *would interfere with law enforcement* or prosecution;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; ...”

Gov’t Code §552.108(b)(1) and (2) (emphasis added).

All six of the records described above involve information dealing with the detection and investigation of crime. No one has been charged in this pending federal investigation, so a conviction has not been obtained. Sensitive federal records such as these would only be disclosed in criminal discovery to legal counsel for individuals charged with a crime. Even records concerning pre-operational planning and communication with non-FBI state officials constitute an “internal record or notation” relating to law enforcement operations. Premature disclosure to the

requestor of any of these six records including all attachments would interfere with the pending federal investigation. In conclusion, the FBI requests an Attorney General decision in favor of not disclosing any FBI information in the responsive records concerning this open record request.

Thank you for your time and attention to this request. I may be contacted at (210) 650-6115 or [mjmcpPhillips@fbi.gov](mailto:mjmcpPhillips@fbi.gov) if you have any questions or require additional information.

Sincerely,



Matthew J. McPhillips  
Chief Division Counsel

cc: Ms. Mary Calcote  
Assistant General Counsel, Texas Department of Public Safety  
[mary.calcote@dps.texas.gov](mailto:mary.calcote@dps.texas.gov)  
*Via e-mail*

Mr. Joseph Larsen (**Redacted**)  
Gregor Wynne Arney PLLC  
[jlarsen@gofirm.com](mailto:jlarsen@gofirm.com)  
*Via e-mail*

JUN 18 2020



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to  
File No.

San Antonio Division  
5740 University Heights Boulevard  
San Antonio, Texas 78249  
June 9, 2020

838735  
841216

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

RE: **Public Information Request #004417 -- Communications Regarding Natin "Nate" Paul, World Class Holdings, World Class Capital Group, and [REDACTED] [REDACTED] Austin, TX 78735.**

Dear Ms. Harden:

The San Antonio Division of the Federal Bureau of Investigation (FBI) is in receipt of your letter dated June 3, 2020. The FBI asserted in our initial response letter dated May 13, 2020 that all records responsive to the request should be excepted from public disclosure under the provisions of Chapter 552 of the Texas Government Code. We reassert that position in this letter and provide the following arguments in support of our position.

Our original six-page response contained arguments in support of the non-disclosure of six (6) e-mail communications involving DPS task force officers using their "dps.texas.gov" e-mail addresses prior to an August 2019 FBI operation. The DPS task force officers were acting in their capacity as FBI task force officers with federal authority on a federal investigation. The six records were described in the letter supported by arguments to withhold their disclosure. Some of these e-mail records contain sensitive attachments related to legal process and law enforcement sensitive operations of a pending federal criminal investigation. The FBI deems all of these e-mail records law enforcement sensitive federal records, and should not be disclosed.

Pursuant to section 552.108 of the Government Code, information held by a law enforcement agency may be excepted from public disclosure if "***release of the information would interfere with the detection, investigation, or prosecution of crime***" or if "it is information that ***deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.***" Gov't Code §552.108(a)(1) and (2) (emphasis added).

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AG Exhibit 0034



Moreover, section 552.108(b) also states “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

- (1) Release of the internal record or notation *would interfere with law enforcement* or prosecution.” Gov’t Code §552.108(b)(1) (emphasis added).

The FBI’s Austin office is currently conducting an active investigation concerning World Class Capital. In August of 2019, the FBI executed federal search warrants in this investigation. No one has been charged in this investigation and it remains pending. As a result, any disclosure of FBI material in an active investigation would interfere with the detection or investigation of criminal activity. This is precisely the basis for which material may be excepted from public disclosure. *See* Tex. Atty. Gen. Op., ORD-127 (1976) (Withholding an arson investigation that was pending and under investigation, and no prosecutive decision had been made); *See also* Tex. Atty. Gen. Op., ORD-613 (1992) (DPS withheld intoxilyzer test results from public disclosure for pending criminal investigations and prosecutions).

The FBI routinely works with its federal, state and local law enforcement partners to conduct criminal and national security investigations. We have multiple task forces throughout Texas whose purpose is to work together to address various types of crime including, but not limited to, gangs, violent crime, white collar crime, terrorism, and narcotics trafficking. The World Class Capital investigation is being conducted by our Austin office. The FBI task force that is conducting this investigation includes representatives from DPS who were deputized as federal agents in August of 2019. The task force officers from DPS were acting in their capacity as federally deputized officers working on a sensitive federal investigation using federal authorities when the search warrant operation occurred in August of 2019. The investigation and search warrant operation was conducted in concert with federal prosecutors from the U.S. Attorney’s Office in Austin.

### **Responsive Records**

DPS provided the FBI with records responsive to the open record request. In total, there are six (6) e-mail communications involving DPS task force officers using their “dps.texas.gov” e-mail addresses, not their FBI-issued e-mail address. Some of these e-mail records contain sensitive attachments related to legal process and law enforcement sensitive operations. Some of these e-mails were sent to DPS management awareness purposes prior to the August 2019 operation. Simply by virtue of the fact that e-mails were sent over the state of Texas e-mail domain, made them responsive to this public information request, but that does not mean they are subject to public disclosure. The FBI deems all of these e-mail records federal records, law enforcement sensitive, and therefore they should not be disclosed.

As argued in our original letter, some of the sensitive records and attachments include the following:

- **“Law Enforcement Operations Order.”** This operation plan was attached to an e-mail, and contains a legal caveat that states the following:

*“(U) LAW ENFORCEMENT SENSITIVE: The information marked (U//LES) in this document is the property of the Federal Bureau of Investigation and may be distributed within the Federal Government (and its contractors), U.S. intelligence, law enforcement, public safety or protection officials and individuals with a need to know. Distribution beyond these entities without Federal Bureau of Investigation authorization is prohibited. Precautions should be taken to ensure this information is stored and/or destroyed in a manner that precludes unauthorized access. Information bearing the LES caveat may not be used in legal proceedings without first receiving authorization from the originating agency. Recipients are prohibited from subsequently posting the information marked LES on a website on an unclassified network without first obtaining FBI approval.”*

This record provides sensitive, detailed information concerning law enforcement operations. This attachment contains the identities of law enforcement personnel, their cell phone numbers, tactics and strategic information, personally identifiable information (PII), photographs, and how law enforcement prepares in advance of an operation. The premature disclosure of this sensitive document to the requestor would inhibit the investigation by providing a preview of information possessed by investigators prior to any criminal charges being filed. This record is ordinarily disclosed to counsel during criminal discovery only after formal charges have been brought.

- **Scaled Affidavit.** This document is the affidavit prepared by an FBI task force officer which established the probable cause for a U.S. Magistrate to authorize the search warrant. This document is currently “under seal” and has not been released to anyone. It is extremely sensitive and provides a roadmap of the investigation including details as to the government’s investigative steps, legal process, and confidential information, including individuals who confidentially provided information to law enforcement. Since no one has been charged in this pending investigation, this affidavit remains sealed. It should not be disclosed.
- **E-mail from DPS task force officer to DPS officials containing the operations plan.** The e-mail contains a legal caveat at the bottom that states *“This communication may be confidential and/or privileged pursuant to relevant law, including Government Code Sections 552.352, 552.101 and 552.111 and should not be disclosed without the express authorization of the Texas Department of Public Safety.”* This e-mail also includes an attachment which is the Law Enforcement Operations Order described above which contains sensitive information. This e-mail – transmitted by FBI task force officers

during the course of a federal investigation – is a federal record and should not be disclosed.

- **E-mail with Attachments including Sealed Federal Court Documents.** This e-mail record was sent by an FBI task force officer to another FBI task force officer from DPS. The e-mail chain contained sealed court documents originating from the U.S. Court office. The documents in the attachment include sealed search warrants filed in federal court, a motion to seal the search warrant applications and search warrant, a signed court order to seal the search warrant applications and search warrant, and the supporting affidavit which provides sensitive and confidential details about the investigation. These records were forwarded by the supervising Assistant United States Attorney to the FBI investigators leading the investigation. The intent was to share it with the investigative team for purposes of the operation, not prematurely disclose it in an open records request simply because it was located on a DPS e-mail server. The FBI is conducting a federal investigation under federal authorities with state task force officers. This e-mail and its attachment are sealed federal court records and should not be disclosed in this open records request.
- **E-mail string concerning pre-enforcement staging areas and evidence.** This e-mail record involved communication among law enforcement officers prior to the August 2019 operation. The e-mail string also included an internal deliberative record concerning a piece of evidence not intended to have been disclosed prematurely to people outside of law enforcement. This information concerns how law enforcement prepares for an operation and should not be disclosed. This is a federal record and should not be disclosed.
- **E-mail communication from DPS task force officer to purported DPS commanders.** This record was sent from an FBI task force officer believed to be directed to his management at DPS in advance of the August 2019 operation. The e-mail was sent in connection with the federal investigation and should not be disclosed at this time.

### **Legal Discussion**

Two provisions of the Texas Government Code preclude disclosure of the responsive records in this matter. First, section 552.108 of the Government Code states information held by a law enforcement agency may be exempted from public disclosure if “*release of the information would interfere with the detection, investigation, or prosecution of crime*” or if “*it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.*” Gov’t Code §552.108(a)(1) and (2) (emphasis added).

Second, section 552.108(b) states “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

- (1) **Release of the internal record or notation would interfere with law enforcement or prosecution.**” Gov’t Code §552.108(b)(1) (emphasis added).

These two provisions provide a strong basis to withhold the six responsive e-mails and attachments in their entirety from disclosure. The federal criminal investigation remains pending, and no one has been charged. Premature release of sealed federal court records which includes a sealed affidavit and search warrant application, as well as a sensitive law enforcement operations order would clearly “interfere with the detection, investigation, or prosecution of crime.” The sealed search warrant affidavit contains non-public information such as individuals who the FBI contacted during the investigation in an effort to develop probable cause to obtain a federal search warrant. Those individuals have privacy interests and if the affidavit is released under this Texas open record request, their identity could be ascertained. This would undoubtedly interfere with the pending federal criminal investigation. All six e-mails are federal records related to the federal investigation, and should be withheld.

Similarly, the content of the e-mails described above are considered “internal records” relating to the August 2019 law enforcement operation. Release of these records would clearly interfere with a law enforcement investigation that has not concluded, and no conviction has been obtained. Both of these provisions of the Texas Government Code provide strong support for non-disclosure.

It is further noted for the Attorney General’s Office that there is a standing order in the Western District of Texas concerning the sealing of warrants. See “Standing Order Regarding Sealing of Warrants,” United States District Court for the Western District of Texas, Austin Division, filed April 22, 2016, [www.txwd.uscourts.gov/judges-information/standing-orders/](http://www.txwd.uscourts.gov/judges-information/standing-orders/). This standing order applies to all search and seizure warrants, including the warrant at issue in this open record request. *Id.* at 1. When an investigation is ongoing - such as the World Class Capital investigation - the order states a motion to extend the sealing of the warrant may be made upon representation of the government “until the investigation results in the filing of a complaint, information, or indictment, or the United States Attorney informs the court that the investigation is otherwise closed.” *Id.* at 3. The order further provides that “[w]hen an investigation is completed with no charges being filed, the warrant documents related to that investigation shall be ordered sealed indefinitely, and shall be retained in the same manner as records relating to wiretaps are retained, as set forth in 18 U.S.C. § 2518(8)(b).” *Id.* at 4. Since the World Class Capital investigation remains pending, and no one has been charged, the applicable warrant applications remain sealed. The applicable warrants may only be unsealed until such a time when an individual is charged with a federal crime, not when requested in the course of a state open record request.

The six responsive records described above are all **federal records** despite the fact that FBI task force officers used their “dps.texas.gov” e-mail address. One federal court has addressed

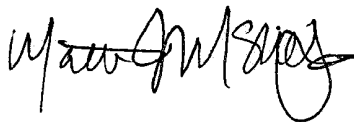
this specific issue and concluded that e-mails sent by a county official using his county e-mail account while serving on a federal board were not state records, and were deemed federal records despite the fact that they had been sent to third parties. *See United States v. Story County, Iowa*, 28 F.Supp.3d 861, 872 (S.D. Iowa 2014). The Story County case involved a county sheriff who served on the First Responders Network Authority (“FirstNet”) board. FirstNet was an independent authority within the National Telecommunications Information Administration, a federal agency within the Department of Commerce. FirstNet was intended to build and deploy a nationwide broadband network to protect against cyber-attacks. *Id.* at 864. The county sheriff, in his capacity as a FirstNet board member, communicated using e-mail with other board members. *Id.* At some point, the sheriff received and sent some e-mail communications using his county e-mail account. *Id.* After an open record request was made, e-mails responsive to the sheriff’s service on the FirstNet board were included. The court eventually concluded “[t]he subject emails [were] federal records and not subject to Iowa’s Public Records Act.” *Id.* at 872.

This is precisely the same situation here. The FBI’s task force officers from DPS serve as federally-recognized task force officers on a federal task force. Simply because they used their state e-mail address for FBI business, does not deem the records they transmit a state record. It is clear based on their content and context, they are federal records relating to a federal criminal investigation that is currently pending.

In conclusion, the FBI requests an Attorney General decision in favor of not disclosing any of the six responsive records. The six e-mails and their attachments are federal records and under the provisions of the Texas Government Code cited above, they should be withheld in their entirety.

Thank you for your time and attention to this request. I may be contacted at (210) 650-6115 or [mjmcphillips@fbi.gov](mailto:mjmcphillips@fbi.gov) if you have any questions or require additional information.

Sincerely,



Matthew J. McPhillips  
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