Harold “Wayne” [redacted]

April 2, 2026

VIA E-FILE

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

RE: REQUESTOR’S WRITTEN COMMENTS AND REBUTTAL REGARDING TPIA REQUEST OF MARCH 9, 2026 (VIDEO AND AUDIO RECORDINGS)

Dear Open Records Division:

This brief is submitted by requestor Harold “Wayne” [redacted] pursuant to Texas Government Code § 552.304. The Colorado County Sheriff’s Office (the “County”), through outside counsel, seeks to withhold all video and audio recordings from the Colorado County Jail related to the January 19, 2026 incident involving inmate [redacted]. The County asserts only two exceptions: that the recordings are confidential under the Texas Homeland Security Act (§ 552.101 incorporating §§ 418.181, 418.182(a), and 421.182) and that they are protected by the litigation exception (§ 552.103). Both claims fail under established law.

I. The County Bears the Burden of Proof and Has Not Met It

Under the Public Information Act, the governmental body bears the burden of demonstrating entitlement to each claimed exception. Tex. Gov’t Code § 552.301; *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 365 (Tex. 2000). Blanket assertions of confidentiality, without particularized justification, are insufficient to carry that burden. The County’s brief relies on heavily redacted argument under § 552.301(e-1), preventing the requestor from fully evaluating or rebutting the specific claims. This office should require the County to demonstrate—not merely assert—how each claimed exception applies to the specific recordings at issue.

The County's limited assertion of only two exceptions is notable in context. In a related TPIA request arising from the same January 19, 2026 incident (OAG Tracking ID: 66377756), the County initially asserted a broad array of exceptions including §§ 552.108, 552.111, and 552.136. The County's outside counsel subsequently withdrew all law enforcement exceptions on that request in a communication to the Attorney General dated March 3, 2026. That withdrawal conceded that the release of records from this incident would not interfere with any law enforcement function, would not compromise officer safety, and would not reveal sensitive personal information beyond what is required to be public. The County cannot credibly claim that the same incident's video evidence poses security concerns requiring confidentiality when it has already conceded the records are not law enforcement-sensitive.

II. The Texas Homeland Security Act Does Not Protect Routine Jail Surveillance Video

A. The Critical Infrastructure Argument (§ 418.181) Fails.

The County invokes § 418.181, which protects information identifying "technical details of particular vulnerabilities of critical infrastructure." The County argues that because the jail qualifies as "critical infrastructure" under § 421.001(2), all recordings from inside it are automatically confidential. This reads the statute far too broadly. Section 418.181 protects *technical details of particular vulnerabilities*—not every piece of information that happens to originate inside a facility that qualifies as critical infrastructure. Under the County's reading, every incident report, visitor log, and communication generated inside any county jail in Texas would be confidential. That cannot be the law.

The video at issue does not identify vulnerabilities in the jail's infrastructure. It records a use-of-force incident—the actions of jail staff and the injuries sustained by an inmate. That is operational conduct, not a technical vulnerability assessment.

B. The Security System Specifications Argument (§ 418.182(a) / § 421.182) Fails.

The County's reliance on *Texas Department of Public Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.), is misplaced. In *Abbott*, the court recognized that video footage from the Texas Capitol—a uniquely high-security government building—could reveal security system specifications. Critically, the court drew a clear distinction: while the underlying "narrative" in the video (what occurred, who did what) was not confidential, the "medium of transmission"—the specific characteristics and capabilities of the security cameras—was protected because it could reveal system vulnerabilities. *Abbott*, 310 S.W.3d at 676–77.

This distinction is dispositive. Even under the County's own cited authority, the *narrative content* of the video—showing the use-of-force incident, the actions of the officers, and the injuries sustained—is not confidential. Only the security system's technical specifications could potentially be protected. The County has not alleged, and cannot allege, that the requested

footage reveals system specifications beyond the basic fact that cameras exist in the jail—a fact already observable by hundreds of inmates, visitors, and staff daily.

The *Abbott* court emphasized that exceptions to the Public Information Act must be construed narrowly. *Id.* at 675. The Colorado County Jail in Columbus, Texas, is not the Texas Capitol. The asserted security interest is speculative. Moreover, the Texas Supreme Court has held that information is not confidential if it has been made available to the public through other sources. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 682 (Tex. 1976). The County cannot claim confidentiality over video from a surveillance system whose existence and general capabilities are already public knowledge.

C. Even Under Abbott, the Remedy Is Redaction, Not Wholesale Withholding.

Even if any portion of the video revealed security system specifications—which is not specifically alleged—the County's own cited authority mandates the remedy: redaction, not wholesale withholding. The Texas Supreme Court requires governmental bodies to segregate and release non-confidential information. *City of Garland*, 22 S.W.3d at 365. Under the framework established by *Abbott* itself, the County must release the narrative content of the video—the factual record of what occurred during the use-of-force incident—with redaction limited to any genuinely security-sensitive technical information, such as camera resolution, field of view, or system metadata, if any such information exists in the recordings.

III. The Litigation Exception (§ 552.103) Does Not Apply to Video Recorded in the Ordinary Course of Business

The Texas Supreme Court has squarely held that the litigation exception does not apply to "information collected and maintained in the ordinary course of an agency's business." *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Jail surveillance video is recorded automatically, twenty-four hours per day, seven days per week, as a matter of routine operation. It is a pre-existing factual record created regardless of whether litigation is anticipated. The video at issue existed—and would have existed—whether or not litigation was ever contemplated.

The Attorney General has consistently interpreted § 552.103 narrowly. Open Records Decision No. 551 (1990) states that the exception "was not intended to protect basic factual information providing a general account of an incident." ORD-551 at 5. This office has consistently held that § 552.103 protects only information *created or gathered* for litigation purposes—attorney strategy, work product, and litigation-specific analysis—not pre-existing factual records that happen to become relevant to anticipated claims. Video footage showing what occurred during a specific incident is precisely such a general account: it is raw factual evidence, not attorney strategy or work product.

The County cites *University of Texas Law School v. Texas Legal Foundation*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997) and *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex.

App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.) for the two-prong test requiring that (1) litigation be pending or reasonably anticipated and (2) the information relate to that litigation. Even assuming litigation is reasonably anticipated, the County cannot satisfy the second prong as interpreted by the Texas Supreme Court in *Georgetown*. The surveillance video does not "relate to" litigation in the sense required by the statute—it is an ordinary-course-of-business record that predates any litigation posture. Accepting the County's argument would mean that every routine record a governmental body maintains could be shielded from disclosure the moment a lawsuit is threatened, swallowing the entire Act.

By asserting § 552.103, the County formally concedes that litigation was "pending or reasonably anticipated" as of March 9, 2026. This concession is noted for the record.

IV. The Requested Video Is Core Factual Evidence of Specific Constitutional Violations

The video at issue captures a use-of-force incident that resulted in a documented traumatic brain injury to a pretrial detainee. The constitutional implications are concrete and specific. The Fourteenth Amendment prohibits the use of excessive force against pretrial detainees, and the applicable standard is objective reasonableness—whether the force used was objectively unreasonable in light of the facts and circumstances confronting the officers. *Kingsley v. Hendrickson*, 576 U.S. 389, 396–97 (2015). Video evidence is uniquely capable of resolving that inquiry, free from the interpretive filters of after-the-fact reports.

The public interest in transparency regarding government use of force against individuals in custody is at its apex. This is especially true given the County's own admissions that it has no Use of Force policy and no PREA policy—facts established in records from this same incident. The Attorney General has recognized that the public interest in government operations and the conduct of public servants is one of the primary purposes of the Act. Where, as here, a governmental body seeks to withhold the single most probative piece of evidence concerning potential constitutional violations in a facility operating without basic use-of-force safeguards, the burden of justification is at its highest.

V. Request for In Camera Review

The County has made blanket assertions of confidentiality supported by heavily redacted argument. Because the County has redacted its substantive discussion under § 552.301(e-1), the requestor cannot fully rebut specific claims. An in camera review by this office is essential for a fair adjudication.

The requestor respectfully asks this office to: (1) conduct an in camera review of the video and audio recordings to determine whether any portion actually reveals security system specifications or critical infrastructure vulnerabilities; (2) apply the *Abbott* framework to distinguish between the narrative content (which must be released) and any technical

specifications (which may be redacted); and (3) reject the County's overbroad § 552.103 claim as applied to pre-existing surveillance footage recorded in the ordinary course of jail operations.

CONCLUSION

The County's two remaining exceptions are legally insufficient. Its homeland security claim conflates routine jail surveillance footage with technical vulnerability assessments of critical infrastructure—a reading so broad it would render confidential virtually every record generated inside any county jail. Its litigation exception claim ignores binding Texas Supreme Court precedent holding that pre-existing, ordinary-course-of-business records are not shielded merely because litigation is later anticipated. The video is core factual evidence of a serious use-of-force incident resulting in a traumatic brain injury to a pretrial detainee, implicating specific Fourteenth Amendment protections under *Kingsley v. Hendrickson*. The public interest weighs decisively in favor of disclosure. Even under the County's own cited authority in *Abbott*, the narrative content of the video must be released. The County should be ordered to release the requested recordings immediately, with redaction only of genuinely security-sensitive technical information, if any exists.

Respectfully submitted,

/s/ Harold "Wayne" [redacted]
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