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 10, 2026

Dear Open Records Division:

This brief is submitted by requestor Harold “Wayne” [redacted] pursuant to Texas Government Code § 552.304 in response to Colorado County’s (the “County”) request for a decision regarding the above-referenced matter. The County initially sought to withhold responsive records by asserting six separate exceptions to the Public Information Act. In its ten-business-day response dated March 24, 2026, the County notified the requestor of its intent to seek an Attorney General ruling and identified the exceptions it intended to assert. (A copy of the County’s ten-day letter is attached hereto as **Exhibit B**.) In its fifteen-business-day brief dated March 31, 2026, the County formally withdrew four of those exceptions (§§ 552.101, 552.108, 552.111, and 552.136). (A copy of the County’s fifteen-day letter and accompanying submission is attached hereto as **Exhibit C**.) This significant concession demonstrates a pattern of initial overreach and narrows the dispute to the County’s two remaining claims: the litigation exception (§ 552.103) and the attorney-client privilege (§ 552.107). For the reasons stated below, these remaining exceptions are also being applied improperly, and the requested records must be released.

I. Requestor’s Good-Faith Effort to Narrow the Dispute

On March 24, 2026, the requestor sent a formal clarification to the County’s counsel, explicitly narrowing the scope of the request to exclude potentially privileged materials, including communications constituting legal advice or prosecutorial deliberations. This clarification was intended to resolve any legitimate concerns and expedite the release of public information. The County’s continued blanket withholding of all remaining factual communications is therefore unreasonable. (A copy of this clarification is attached hereto as **Exhibit A**).

II. The Litigation Exception (§ 552.103) is Impermissibly Overbroad

The County's blanket assertion of the litigation exception fails for two distinct reasons.

First, the Texas Supreme Court has 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). The communications between elected officials regarding their public duties are quintessential ordinary-course-of-business records, not attorney work product. By asserting section 552.103, the County formally concedes that litigation was "pending or reasonably anticipated" as of March 10, 2026. This concession is noted for the record as it relates to the County's ongoing legal duty to preserve all relevant evidence.

Second, the exception cannot cover the entire scope of the request because many of the requested subjects have no specific nexus to the [redacted] personal injury claim. The request sought communications on broad governmental policy matters, including federal grant compliance (subject #6), PREA policy deficiencies (subject #7), and civil rights certifications (subject #8). These are matters of general county administration. A blanket assertion to withhold all communications on these broad policy topics, which are distinct from the specific use-of-force incident, is an improper overreach.

III. The Attorney-Client Privilege (§ 552.107) Cannot Shield Factual Inter-Official Communications

The County's wholesale assertion of attorney-client privilege is a misapplication of the law. This privilege protects communications made for the primary purpose of seeking or rendering legal advice; it does not protect factual, inter-official business communications.

Communications between non-attorney officials like the County Judge, Commissioners, and Sheriff discussing jail operations or policy failures are not privileged. They do not become privileged simply because an attorney was later copied or looped into the conversation. As stated in Open Records Decision No. 574 (1990), "information is not privileged merely because it is submitted to an attorney."

The County has a statutory duty to segregate and release the non-privileged, factual portions of these records. Its refusal to do so is a violation of the Act. As this office held in Open Records Decision No. 676 (2002), a governmental body must redact only the privileged portions of a communication and release the remaining factual information; purely factual matters severable from legal advice are not protected.

IV. The Texas Open Meetings Act (TOMA) Overrides Secrecy Claims

A primary purpose of this request is to determine whether a quorum of the Commissioners Court conducted public business in violation of TOMA. As discussed in Attorney General Opinion GA-0942 (2012), which analyzes TOMA's application to electronic communications, serial communications via email among a quorum of a governmental body deliberating public business can constitute an illegal "meeting." The TPIA's confidentiality exceptions cannot be wielded as a shield to conceal evidence of potential TOMA violations by the governmental body itself. The

public interest in policing the integrity of the open-meetings process is a compelling interest that weighs against withholding these records.

V. In the Alternative: The County Must Release Non-Privileged Metadata

As clarified to the County on March 24, 2026, if it continues to withhold the full content of any communications, it must, at a minimum, release the non-privileged metadata for each withheld record. This metadata includes the sender, all recipients, the date and time, and the subject line. This metadata is not protected by attorney-client privilege because it does not reveal the substance of any confidential legal advice, nor is it protected by the litigation exception, as it constitutes basic factual information, not attorney work product. This information is directly relevant to policing compliance with the Texas Open Meetings Act and cannot be lawfully withheld.

VI. REQUEST FOR IN CAMERA REVIEW

Given the County's broad, blanket assertions of privilege rather than a document-by-document justification, the requestor explicitly asks the Open Records Division to conduct an in camera review of the withheld documents to determine the validity of the County's claims for each individual record. Further, because the County redacted its substantive arguments from the copy provided to the requestor, as permitted under § 552.301(e-1), the requestor cannot fully rebut the County's specific factual claims for each document. This makes an in camera review by this office not merely appropriate, but essential for a fair and impartial adjudication of the County's privilege assertions.

CONCLUSION

The County's legal position for withholding these records has been substantially narrowed by its own concessions. Its remaining reliance on the litigation and attorney-client privileges is overbroad and inconsistent with the provisions of the Act. I respectfully urge this office to order the County to release all responsive, non-privileged factual communications and, at a minimum, the metadata for any communication for which a privilege is properly asserted.

Sincerely,

/s/ [redacted]
Harold "Wayne" [redacted]