



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 25, 2008

Ms. Neera Chatterjee  
Public Information Coordinator  
University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2008-16240

Dear Ms. Chatterjee:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 327536.

The University of Texas at Austin (the "university") received a request for eight categories of information related to communications involving a named university employee from January 1, 2003 to the present. You state the university does not have information responsive to categories three through eight.<sup>1</sup> You state the university has released information responsive to category two. You claim portions of the submitted information are excepted from disclosure under section 552.137 of the Government Code.<sup>2</sup> You also indicate that release of the submitted information may implicate the interests of the Federal Bureau of Investigation (the "FBI"). You state, and provide documentation showing, that you have notified the FBI of the request and of its opportunity to submit comments to this office as to why the submitted information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that

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<sup>1</sup>We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup>Although the university also raises section 552.101 of the Government Code, you have provided no arguments explaining how this exception is applicable to the submitted information. Therefore, we presume you no longer assert this exception to disclosure. Gov't Code §§ 552.301, .302.

statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have received comments from the FBI. We have considered the submitted arguments and reviewed the submitted information.

Initially, we address the FBI's claim that the submitted information is confidential under the Freedom of Information Act ("FOIA"), title 5 of section 552 of the United States Code. *See* 5 U.S.C. § 552. The FBI states that "all materials, records or documents, which have originated with or were created by FBI employees, belong to the FBI." The FBI further states that "[a]s FBI records, they may be released only in conformance with the provisions of federal laws and regulations, including [FOIA]."

The FBI raises section 552.101 of the Government Code in conjunction with FIOA. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. In Attorney General Opinion MW-95 (1979), this office determined that FOIA does not apply to records held by a Texas agency or its political subdivision. Furthermore, this office has stated in numerous opinions that information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure merely because the same information is or would be confidential under one of FOIA's exceptions. *See* Open Records Decision Nos. 496 at 4 (1988), 124 at 1 (1976). However, this office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974); Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. The interagency transfer doctrine is based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989). In Open Records Decision No. 561, we considered whether the same rule applied regarding information deemed confidential by a federal agency. In that decision, we concluded that, in the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, "when information in the possession of a federal agency is 'deemed confidential' by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, [section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law." *Id.* at 7.

However, in this instance, the federal agency has not established that the correspondence at issue includes confidential information. Consequently, we find the submitted information is not confidential under federal law.

The FBI also claims the submitted information may be excepted from disclosure under common-law privacy. Section 552.101 encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we determine that no portion of the submitted information is highly intimate or embarrassing, the publication of which would be objectionable to a reasonable person. Therefore, none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

Next, we will address the FBI's assertion that the submitted information is confidential under section 552.108(b)(1) of the Government Code, which excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 252 (1980) (Gov't Code § 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted).

By its terms, section 552.108 applies only to records created by an agency whose primary function is to investigate or prosecute crimes and enforce criminal laws. *See* Open Record Decision Nos. 493 (1988), 287 (1981). The university is not a law enforcement agency. This office has determined, however, that section 552.108 may be invoked by any proper custodian of information. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Where a non-law enforcement agency has custody of information relating to a pending criminal case of a law enforcement entity, the agency having custody of the information may withhold the information under section 552.108 if the agency provides this

office with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information.

In this instance, the FBI argues that release of the names of FBI Special Agents “may seriously impair their effectiveness in conducting future investigations.” Based on this statement and our review, we agree that release of the information identifying FBI Special Agents would, if released, interfere with law enforcement. Thus, we have marked the identifying information that may be withheld under section 552.108(b)(1) of the Government Code.<sup>3</sup> However, we find the FBI has failed to establish how public access to the remaining information would interfere with law enforcement or endanger FBI Special Agents. Accordingly, the remaining information may not be withheld under section 552.108. As no other arguments are raised against the disclosure of the remaining information, it must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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<sup>3</sup>As our ruling is dispositive for this information, we need not address the university’s argument under section 552.137 of the Government Code.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jordan Hale  
Assistant Attorney General  
Open Records Division

JH/jb

Ref: ID# 327536

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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