



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2009

Ms. Katie Lentz
Open Records
Williamson County Sheriff
508 South Rock Street
Georgetown, Texas 78626

OR2009-06722

Dear Ms. Lentz:

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# 343394.

The Williamson County Sheriff's Office (the "sheriff") received a request for documents referring to the sheriff's inspection and monitoring of the T. Don Hutto Family Residential Facility. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the sheriff withdrew its request for an opinion on the applicability of the release of U.S. Immigration and Customs Enforcement documents, as the requestor agreed to the sheriff not releasing those documents. Thus, the U.S. Immigration and Customs Enforcement documents you have submitted are not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the sheriff is not required to release this information, which we have marked as non-responsive, in response to this request.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You

raise section 552.101 in conjunction with section 236.6 of title 8 of the Code of Federal Regulations.¹ Section 236.6 of title 8 provides as follows:

No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the [Immigration and Naturalization] Service [(the "INS")] (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee.² Such information shall be under the control of [the INS] and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

8 C.F.R. § 236.6. You contend the information you have marked is confidential under section 236.6 because it pertains to INS detainees. Based on your arguments and our review of the information in question, we agree that the sheriff is required to abide by rules promulgated by the INS with regard to INS detainees. *See* 8 C.F.R. § 2.1 (providing that Secretary of Homeland Security may issue regulations to administer and enforce laws relating to immigration and naturalization of aliens); *see also American Civil Liberties Union of New Jersey, Inc. v. County of Hudson*, 799 A.2d 629 (N.J. 2002) (stating that while state possesses sovereign authority over operation of its jails, it may not operate them, in respect to INS detainees, in any way that derogates federal government's exclusive and expressed interest in regulating aliens). Upon review of the submitted information, we agree that it relates to INS detainees and is therefore made confidential by section 236.6 of title 8 of the Code of Federal Regulations. Therefore, you must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 236.6 of title 8 of the Code of Federal Regulations. *See ACLU*, 799 A.2d at 655 (concluding that because INS had authority to promulgate 8 C.F.R. § 236.6, provision preempts state law

¹Section 552.101 encompasses information that other statutes make confidential. A federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 476 (1987) (addressing statutory predecessor).

²We note that the functions of the INS were transferred to the Department of Homeland Security on March 1, 2003. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002). However, as section 236.6 still refers to the agency at issue as "the INS," we will also do so in this ruling.

requiring disclosure of requested information); *see also English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation).

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 343394

Enc. Submitted documents

c: Requestor
(w/o enclosures)