



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2013

Mr. James McKechnie
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307-1431

OR2013-00087

Dear Mr. McKechnie:

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# 475050 (City ID# 487).

The Wichita Falls Police Department (the "department") received a request for specified bank statements created during a specified time period and any contract with any federal agency regarding seizure of property or money. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. You also state release of the submitted information may implicate the interests of the Federal Bureau of Investigation (the "FBI"). *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the FBI. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have not submitted for our review any information responsive to the request for specified bank statements. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

The FBI argues most of the submitted information is not responsive to the request because it is outside the scope of the request. The present request for information seeks, in pertinent part, any contract with any federal agency regarding seizure of property or money. A governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the department has reviewed its records and determined the submitted information, which consists of a Memorandum of Understanding (the "MOU") between the department and the FBI, is responsive to the request. Thus, we find the department has made a good-faith effort to relate the request to information within its possession or control. Accordingly, the submitted MOU is responsive to the request for information, and we will determine whether any of this information must be withheld under the Act.

The FBI and the department assert the submitted MOU is labeled as property of the FBI, and, as such, the MOU is excepted under section 552.101 of the Government Code in conjunction with section 552(b)(4) the federal Freedom of Information Act ("FOIA"), chapter 552 of title 5 of the United States Code.¹ In Attorney General Opinion MW-95 (1979), this office determined FOIA does not apply to records held by an agency of the State of Texas or its political subdivisions. Furthermore, this office has stated in numerous opinions information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure under the Act merely because the same information is or would be confidential under one of FOIA's exemptions. *See* Open Records Decision Nos. 496 at 4 (1988), 124 at 1 (1976). However, if a federal agency shares its information with a Texas governmental agency, the Texas agency must withhold the information the federal agency determines to be confidential under federal law. *See* ORD 561 at 6-7; *accord United States v. Napper*, 887 F.2d 1528, 1530 (11th Cir. 1989) (finding documents FBI lent to city police department remained property of FBI and were subject to any restrictions on dissemination of FBI-placed documents). In this instance, the MOU is an executed contract between the FBI and the department and is maintained by the department in connection with the department's participation in the Tarrant County Safe Streets Task Force. Therefore, we conclude the submitted MOU was not simply shared with the department by the FBI, but rather the MOU is maintained by the department in relation to the official business of the department. *See* Gov't Code § 552.002(a)(1). Consequently, the submitted MOU may not be withheld under FOIA.

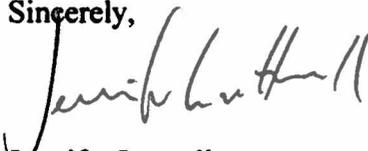
The FBI also generally asserts the submitted MOU is excepted under section 552.101 in conjunction with federal law. However, beyond its arguments regarding FOIA, the FBI has not directed our attention to any federal law, nor are we aware of any federal law, that makes the MOU confidential. Therefore, the MOU may not be withheld under section 552.101 of the Government Code. As no other exceptions to disclosure have been claimed, the submitted information must be released.

¹Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 475050

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Carl B. Sanford
Associate Division Counsel
Dallas Division
U.S. Department of Justice
Federal Bureau of Investigation
One Justice Way
Dallas, Texas 75220-5220
(w/o enclosures)