



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 9, 2013

Ms. Michelle L. Villarreal
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2013-17565

Dear Ms. Villarreal:

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# 501759 (City Reference No. LGL 13-548).

The Waco-McLennan County Office of Emergency Management (the "county") received a request for all correspondence to or from county employees during a specified time period. You state the county has released some information to the requestor. You claim some of 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 must address the county's procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is

voluminous. *See id.* § 552.301(e)(1). You state the county received the present request for information on July 2, 2013. We note July 4, 2013 was a holiday. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the county's ten- and fifteen-business-day deadlines were July 17, 2013, and July 24, 2013, respectively. However, the county submitted its request for a decision and the information required by section 552.301(e) in an envelope meter-marked August 1, 2013. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we find the county failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the county's claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address your arguments under that exception.

Next, we note the submitted information contains password information that is not subject to the Act. The Act is applicable only to "public information." *See* Act of May 27, 2013, 83rd Leg., R.S., S.B. 1368, § 1 (to be codified as an amendment to Gov't Code § 552.002); Gov't Code § 552.021. Section 552.002(a) defines "public information" as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Act of May 27, 2013, 83rd Leg., R.S., S.B. 1368, § 1 (to be codified as an amendment to Gov't Code § 552.002). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). This office has determined certain computer information, such as source codes, documentation information, and other computer programming that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. See Open Records Decision No. 581 (1990). Based on the reasoning in that decision and our review of the information at issue, we determine the submitted password information does not constitute public information under section 552.002. Accordingly, the submitted password information is not subject to the Act and need not be disclosed.¹

Section 552.101 of the Government Code 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 other statutes make confidential. You state the submitted information consists of e-mails and attachments from Federal Emergency Management Agency ("FEMA"). You state FEMA asserts the submitted information contains personally identifiable information that is protected by the Privacy Act of 1974, section 552a of title 5 of the United States Code ("Federal Privacy Act"). We note 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 in the hands of a federal agency. See, e.g., Attorney General Opinion MW-95 (1979) (concluding that neither the federal Freedom of Information Act nor the federal Privacy Act applies to records held by state or local governmental bodies in Texas). However, this office has also held that section 552.101 requires a local governmental entity that has obtained information from a federal agency to respect confidentiality imposed on the information by federal law. See Open Records Decision No. 561 (1990).

The Privacy Act provides in part "[n]o [federal] agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure would be" allowed by one of twelve enumerated exceptions. 5 U.S.C. § 552a(b).

¹As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

We understand the information contained in the e-mail attachments was compiled by FEMA and pertains to the provision of emergency federal assistance. We note this information was provided to the county to assist in providing assistance to individuals impacted by the West Fertilizer Company explosion. You state FEMA asserts the submitted individually identifying information is protected by the Privacy Act. We therefore find the individually identifying information in the submitted e-mail attachments are confidential pursuant to the Privacy Act, and retained their confidentiality when they were transferred to the county. Release of the individually identifying information in the e-mail attachments in response to the present request would not be a release in accordance with the exceptions to the Privacy Act. Therefore, the individually identifying information in the submitted e-mail attachments must be withheld under section 552.101 of the Government Code in conjunction with federal law. As no further exceptions to disclosure are raised, the county must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 501759

Enc. Submitted documents

c: Requestor
(w/o enclosures)