



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2014

Ms. Molly Cost
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2014-16328

Dear Ms. Cost:

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# 534941 (PIR # 14-2400).

The Texas Department of Public Safety (the "department") received a request for all reports relating to the arrival of undocumented minors in the United States during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. You also state release of the submitted information may implicate the interests of the Texas Joint Crime Information Center ("Center"), and the Customs and Border Patrol Office of Intelligence and Operations Coordination ("CBP"). Accordingly, you notified these third parties of the request for information and of their rights to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from CBP. We have

considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. *See* 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. 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 noted the general rule that section 552 of title 5 of the United States Code, the federal Freedom of Information Act (“FOIA”), applies only to federal agencies and does not apply to records held by state agencies. ORD 561 at 6. Further, we stated information is not confidential when in the hands of a Texas agency simply because the same information is confidential in the hands of a federal agency. *Id.* However, in the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, we concluded, “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.

The CBP informs this office Tabs B and C were provided to the department by the CBP. The CBP informs this office it considers the information at issue confidential under the provision found in section 552(b)(7)(E) of title 5 of the United States Code. *See* 5 U.S.C. § 552(b)(7)(E). Therefore, we conclude the department must withhold the records in Tabs B and C under section 552.101 of the Government Code in conjunction with federal law.

You state Tab A is subject to section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). 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.”

¹We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

City of Fort Worth v. Cornyn, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that subsection 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). You state the records in Tab A contain information concerning “ongoing operations by the [d]epartment and other law enforcement agencies at the Texas border to detect, prevent, and respond to terroristic threats and other criminal activities.” You further state the information at issue includes “details of staffing and equipment utilized for these operations and strategies employed in these operations.” You assert release of the information at issue “would provide wrong-doers, drug traffickers, terrorists, and other criminals with invaluable information concerning the law enforcement efforts at the Texas border, allowing these groups to identify vulnerabilities and avoid detection.” Based upon your representations and our review, we conclude release of the information at issue would interfere with law enforcement. Accordingly, the department may withhold the records in Tab A under section 552.108(b)(1) of the Government Code.

In summary, the department must withhold the records in Tabs B and C under section 552.101 of the Government Code in conjunction with federal law. The department may withhold the records in Tab A under section 552.108(b)(1) of the Government Code.

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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 534941

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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