



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2014

Mr. Jonathan Miles
Open Government Attorney
Texas Department of Family and Protective Services
Mail Code E611
P.O. Box 149030
Austin, Texas 78714-9030

OR2014-16699

Dear Mr. Miles:

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# 535343 (DFPS Ref. No. 06112014UMP).

The Texas Department of Family and Protective Services (the "department") received a request for any and all daily, weekly, or monthly reports regarding, concerning, or related to the arrival of undocumented minors in the United States during a specified time period.¹ We understand you to claim the submitted information may be excepted under section 552.101 of the Government Code. Additionally, you state release of this information may implicate the interests of the Federal Emergency Management Agency ("FEMA") and the Texas Department of State Health Services ("DSHS"). Accordingly, you state you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue should not be released. As of the date of this letter, we have not received comments from either FEMA or DSHS. We note we have received comments from the Customs and Border Patrol Office of Intelligence and Operations Coordination ("CBP") regarding some of the submitted information. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why

¹You state the department sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

requested information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

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.” *Id.* § 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 some of the submitted information was provided to the Department of Public Safety by the CBP. We note the information was subsequently shared with DSHS and the department. 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) (protecting records or information compiled for law enforcement purposes which would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of law). Therefore, we conclude the department must withhold this information, which we have indicated, under section 552.101 of the Government Code in conjunction with federal law.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the department must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure.

In summary, the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with federal law. The department must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure. The department 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 535343

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Sara Richardson
Office of the General Counsel
Texas Department of State Health Services
1100 West 49th Street
Austin, Texas 78756
(w/o enclosures)

FEMA FOIA Office
Re: Interagency Unified Coordination Group
Mail Stop 3172
500 C Street, SW
Washington, D.C. 20472
(w/o enclosures)

Mr. Troy A. Miller
Acting Assistant Commissioner
Office of Intelligence and Investigative Liaison
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, D.C. 20229
(w/o enclosures)