



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 29, 2016

Ms. Susan E. Tennyson
Open Government Attorney
Texas Department of Family and Protective Services
P.O. Box 149030, Agency Mail Code: E611
Austin, Texas 78714-9030

OR2016-21972

Dear Ms. Tennyson:

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# 628324 (DFPS ORR Nos. 03152016M7 and 0509201630C).

The Texas Department of Family and Protective Services (the "department") received a request for information pertaining to specified applications for licensure. You state the department will redact motor vehicle record information under section 552.130(c) of the Government Code, insurance policy numbers and bank account numbers under section 552.136(c) of the Government Code, and social security numbers under section 552.147(b) of the Government Code.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of the United States Immigration and Customs Enforcement ("ICE"), GEO Group, d/b/a Karnes County Residential Center ("GEO"), and CCA South Texas, L.L.C., d/b/a South Texas Family Residential Center

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136(c) of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *Id.* § 552.147(b).

("CCA").² Accordingly, you state you notified the third parties of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code §§ 552.304 (interested third party may submit comments stating why information should or should not be released), .305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from ICE, GEO, and CCA. We have considered the submitted arguments and reviewed the submitted representative sample of information.³

Initially, CCA contends its information is not responsive to the present request for information. CCA asserts its license application was submitted to the department after the date listed on the instant request. 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 documents at issue are responsive to the present request. Thus, we find the department has made a good-faith effort to relate the request to information within its possession or control on the date the department received the request. Accordingly, we will determine whether the department must release this information to the requestor under the Act.

Next, we note you state you will redact public citizens' dates of birth pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. We also note a governmental body may not withhold information from the public without asking this office for a decision under section 552.301 of the Government Code unless a provision of the Act or a previous determination specifically authorizes the governmental body to do so. *See* Gov't Code § 552.301(a); *see also, e.g., id.* §§ 552.024(c), .147; Open Records Decision No. 673 (2001) (previous determinations). We are unaware of any statutory or other authority that would permit the department to withhold public citizens' dates of birth without asking this office for a decision. Therefore, the department may not redact public citizens' dates of birth without asking this office for a ruling under section 552.301.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A

²We note the department did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the interest of a third party can provide a compelling reason to overcome the presumption of openness, we will consider third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

³We 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.

private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. GEO and CCA state they have competitors. In addition, GEO and CCA state release of the information at issue would give advantage to their competitors. After review of the information at issue and consideration of the arguments, we find GEO and CCA have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the department may withhold Exhibits C and D under section 552.104(a).⁴

Section 552.101 of the Government Code exempts 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, 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.

ICE informs this office Exhibit B was provided to the department by ICE. ICE also informs this office that it considers the information at issue to be confidential under the provisions found in sections 552(b)(7)(E) and 552(b)(7)(F) 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), (F) (protecting records or information compiled for law enforcement purposes which could reasonably be expected to endanger the life or physical safety of any individual). Therefore,

⁴As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

we conclude the department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with federal law.⁵

In summary, the department may withhold Exhibits C and D under section 552.104(a) of the Government Code. The department must withhold Exhibit B under section 552.101 of the Government Code in conjunction with federal law.

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 628324

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

⁵As our ruling is dispositive, we need not address ICE's remaining argument against disclosure of this information.