



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 2, 2016

Ms. Lauren Downey
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2016-24376

Dear Ms. Downey:

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# 633624 (PIR No. 16-44977).

The Office of the Attorney General (the "OAG") received a request for communications containing any of eleven specified terms during a designated time period that pertain to a specified merger. The OAG claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

The OAG asserts the submitted information is confidential under federal law. 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 office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. *See, e.g.,* Attorney General Opinions H-917 (1976), H-836 (1974), Open Records Decision Nos. 561 (1990), 414 (1984), 272 (1981). 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 chapter 552 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. *See* ORD 561 at 6. Further, we stated that 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 that: “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 OAG explains the submitted information was obtained by the United States Department of Justice (“DOJ”) pursuant to the DOJ’s statutory authority under the federal Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”). *See* 15 U.S.C. § 18a(d), (e)(1)(A) (authorizing DOJ to require the submission of information related to a proposed acquisition to determine whether such acquisition would violate federal antitrust laws). The HSR Act provides, in pertinent part, the following:

Any information or documentary material filed with the [United States] Assistant Attorney General [in charge of the Antitrust Division of the DOJ] or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of Title 5 [of the United States Code (FOIA)], and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding.

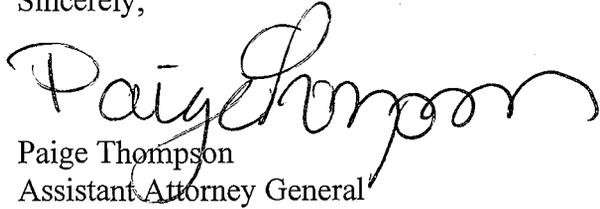
Id. § 18a(h). The OAG states the submitted information constitutes confidential HSR Act information obtained by the DOJ. The OAG further explains the DOJ provided the information at issue to the OAG’s Consumer Protection Division as part of a combined federal and multi-state investigation, and the DOJ and OAG shared a common interest in the investigation at issue. Upon review, we find the OAG must withhold the submitted information at issue 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,

A handwritten signature in black ink that reads "Paige Thompson". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/eb

Ref: ID# 633624

Enc. Submitted documents

c: Requestor
(w/o enclosures)