



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 16, 2016

Ms. Kristen Lee
Assistant County Attorney
Harris County
1019 Congress Street, 15th Floor
Houston, Texas 77002

OR2016-03628

Dear Ms. Lee:

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# 598561 (C.A. File No. 15PIA0480).

The Harris County Sheriff's Office (the "sheriff's office") received a request for the total number of federal detainees placed on specified inmates during a specified time period and information about specified inmates during a specified time period, or the sheriff's office booking database during a specified time period and specified information about the database. You state the sheriff's office does not have information responsive to a portion of the requested information.¹ You claim 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 representative sample of information.²

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2(1990), 452 at 3 (1986), 362 at 2 (1983).

²We 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.

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 section encompasses section 236.6 of title 8 of the Code of Federal Regulations,³ which protects information regarding detainees held on behalf of the Immigration and Naturalization Service (the “INS”).⁴ This section provides as follows:

No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the [INS] (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the [INS] and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

8 C.F.R. § 236.6. The sheriff’s office asserts the information at issue pertains to INS detainees. Based on this representation and our review, we agree the sheriff’s office is required to abide by rules promulgated by the INS with regard to INS detainees. *See* 8 C.F.R. § 2.1 (providing that Secretary of Homeland Security may issue regulations to administer and enforce laws relating to immigration and naturalization of aliens); *see also* *ACLU of N.J., Inc. v. County of Hudson*, 799 A.2d 629 (N.J. 2002) (stating that while state possesses sovereign authority over operation of its jails, it may not operate them, in respect to INS detainees, in any way that derogates federal government’s exclusive and expressed interest in regulating aliens). The sheriff’s office does not provide our office with any applicable federal law, regulation, or executive order that provides the requestor with a right of access to the information at issue. We therefore conclude the submitted information is made confidential by section 236.6 of title 8 of the Code of Federal Regulations and must be withheld from the requestor pursuant to section 552.101 of the Government Code in

³Section 552.101 encompasses information that other statutes make confidential. A federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 476 (1987) (addressing statutory predecessor).

⁴We note that the functions of the INS were transferred to the Department of Homeland Security on March 1, 2003. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002). However, as section 236.6 still refers to the agency at issue as “the INS,” we will also do so in this ruling.

conjunction with section 1103(a)(3) of title 8 of the United States Code (providing that the Secretary of Homeland Security shall establish regulations necessary to carry out laws relating to immigration and naturalization) and section 236.6 of title 8 of the Code of Federal Regulations. *See ACLU*, 799 A.2d at 655 (concluding that because INS had authority to promulgate 8 C.F.R. § 236.6, provision preempts state law requiring disclosure of requested information); *see also English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation).

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 598561

Enc. Submitted documents

c: Requestor
(w/o enclosures)