



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2017

Ms. Jordan M. Powell
Assistant District Attorney
County of Caldwell
1703 South Colorado Street, Box 5
Lockhart, Texas 78644

OR2017-06318

Dear Ms. Powell:

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# 650522 (Ref# 2016-083).

The Caldwell County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.1085, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We note the sheriff's office failed to comply with section 552.301 of the Government Code in requesting a ruling. *See* Gov't Code § 552.301. Nonetheless, because sections 552.101, 552.102, 552.1085, and 552.136 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352. We further note we asked the sheriff's office to provide additional information pursuant to section 552.303 of the Government Code. *See id.* § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the correspondence sent by the sheriff's office pursuant to that request.

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 those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information that other statutes make confidential. Additionally, this office has determined a federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 599 at 4 (1992). Section 831.13 of title 49 of the Code of Federal Regulations applies to the release of information concerning accident investigations by the National Transportation Safety Board (the “NTSB”). 49 C.F.R. § 831.13; *see also* 49 U.S.C. §§ 1101 *et seq.*; *see also* 49 U.S.C. § 1113(f) (providing NTSB “may prescribe regulations to carry out [chapter 11 of title 49 of the United States Code]”). Section 831.13(b) reads as follows:

All information concerning the accident or incident obtained by any person or organization participating in the investigation shall be passed to the [investigator-in-charge] through appropriate channels before being provided to any individual outside the investigation. Parties to the investigation may relay to their respective organizations information necessary for purposes of prevention or remedial action. However, no information concerning the accident or incident may be released to any person not a party representative to the investigation (including non-party representative employees of the party organization) before initial release by the Safety Board without prior consultation and approval of the [investigator-in-charge].

49 C.F.R. § 831.13(b). You state the submitted information consists of records involved in an ongoing investigation by the NTSB. You also assert the sheriff’s office is a participant and party to the NTSB investigation. You state the NTSB has not released the submitted information, and the sheriff’s office has not received approval from the NTSB investigator-in-charge to release the submitted information. Thus, we conclude, unless the sheriff’s office receives consent to release the information at issue from the NTSB investigator-in-charge, the sheriff’s office must withhold the submitted information under section 552.101 in conjunction with section 1113(f) of title 49 of the United States Code and section 831.13(b) of title 49 of the Code of Federal Regulations.³

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

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/som

Ref: ID# 650522

Enc. Submitted documents

c: Requestor
(w/o enclosures)