



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 31, 2017

Ms. Cathy Cunningham  
Counsel for the City of Bedford  
Boyle & Lowry, L.L.P.  
4201 Wingren, Suite 108  
Irving, Texas 75062-2763

OR2017-17052

Dear Ms. Cunningham:

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# 668701.

The City of Bedford (the "city"), which you represent, received a request for seven categories of information pertaining to the city, immigration detainees, and immigration detention facilities, including a specified facility, during a specified time period. 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 information.

Initially, we note the submitted information contains password information that is not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code § 552.021. Section 552.002(a) of the Act defines public information as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

*Id.* § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). This office has determined certain computer information, such as source codes, documentation information, and other computer programming that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. See Open Records Decision No. 581 (1990). Based on the reasoning in that decision and our review of the information at issue, we determine the information we have marked does not constitute public information under section 552.002. Accordingly, the marked information is not subject to the Act and need not be disclosed.<sup>1</sup>

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,<sup>2</sup> which protects information regarding detainees held on behalf of the Immigration and Naturalization Service (the "INS").<sup>3</sup> Section 1103(a)(3) of title 8 of the United States Code authorizes the Secretary of Homeland Security to establish regulations necessary to carry out laws relating to immigration and naturalization. 8 U.S.C. § 1103(a)(3). Section 236.6 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

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<sup>1</sup>As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

<sup>2</sup>Section 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).

<sup>3</sup>We note 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.

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 city asserts the submitted information pertains to INS detainees. Based on this representation and our review, we agree the city is required to abide by rules promulgated by the INS with regard to INS detainees. *See id.* § 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 city 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. Upon review, we agree some of the submitted information relates to INS detainees and is thus made confidential by section 236.6 of title 8 of the Code of Federal Regulations. Therefore, the city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1103(a)(3) of title 8 of the United States Code and section 236.6 of title 8 of the Code of Federal Regulations. *See ACLU*, 799 A.2d at 655 (concluding 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 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 federal agency acting within scope of its congressionally delegated authority may preempt state regulation). However, we find the city has not established any of the remaining information relates to an INS detainee. Thus, none of the remaining information may be withheld on this basis.

Some of the remaining information may be subject to section 552.1175 of the Government Code.<sup>4</sup> Section 552.1175 protects the home address, home telephone number, emergency

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Some of the remaining information pertains to individuals who may be subject to section 552.1175. Thus, the city must withhold the information we have marked under section 552.1175 if it pertains to individuals who are subject to section 552.1175(a) and the individuals elect to restrict access to their information in accordance with section 552.1175(b); however, the city may only withhold the cellular telephone numbers we marked if the cellular telephone service was not provided to the individuals at issue at public expense. If the individuals are not subject to section 552.1175(a) or they do not elect to restrict access to this information in accordance with section 552.1175(b), then the city may not withhold this information under section 552.1175. In addition, the city may not withhold the cellular telephone numbers marked under section 552.1175 if the cellular telephone service was provided to the individuals at issue at public expense.

In summary, the information we have marked is not subject to the Act and need not be disclosed. The city must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with section 1103(a)(3) of title 8 of the United States Code and section 236.6 of title 8 of the Code of Federal Regulations. The city must withhold the information we have marked under section 552.1175 if it pertains to individuals who are subject to section 552.1175(a) and the individuals elect to restrict access to their information in accordance with section 552.1175(b); however, the city may only withhold the cellular telephone numbers we marked if the cellular telephone service was not provided to the individuals at issue at public expense. The city must release the remaining information.

Finally, you ask this office to issue a previous determination permitting the city to withhold information made confidential by section 236.6 of title 8 of the Code of Federal Regulations under section 552.101 of the Government Code in conjunction with section 1103(a)(3) of title 8 of the United States Code. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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, appearing to read "Ian Lancaster". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/tdw

Ref: ID# 668701

Enc. Submitted documents

c: Requestor  
(w/o enclosures)