



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 12, 2017

Major Carlos Delgado
Starr County Sheriff's Office
102 East Sixth Street
Rio Grande City, Texas 78582

OR2017-20819

Dear Major Delgado:

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# 675568.

The Starr County Sheriff's Office (the "sheriff's office") received a request for all records sent to the sheriff's office by the U.S. Marshal's Service ("USMS") pertaining to a named individual during a specified time period. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974), Open Records Decision Nos. 561.

¹The requestor asserts, and we agree, the sheriff's office failed to comply with section 552.301 of the Government Code in requesting a ruling; however, section 552.101 of the Government Code can provide a compelling reason to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .301, .302, .352. Accordingly, we will consider the sheriff's office's argument under section 552.101.

(1990), 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 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.

You inform us the information at issue was provided to the sheriff’s office by USMS. You state USMS considers the submitted information confidential under the law enforcement provisions found in sections 552(b)(7)(D), 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)(D) (protecting information compiled for law enforcement purposes which could reasonably be expected to disclose the identity of confidential source or information furnished by confidential source), (7)(E) (protecting information compiled for law enforcement purposes which would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of law), (7)(F) (protecting information compiled for law enforcement purposes which could reasonably be expected to endanger life or physical safety of any individual). Therefore, we conclude that the sheriff’s office must withhold the submitted information under section 552.101 of the Government Code in conjunction with federal law.²

You ask this office to issue a previous determination that would permit the sheriff’s office to withhold USM-40 forms without requesting a ruling from this office. *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.

²As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/gw

Ref: ID# 675568

Enc. Submitted documents

c: Requestor
(w/o enclosures)