



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 19, 2017

Mr. Cedrick Collier
Public Information Officer
Harris County Sheriff's Office
1200 Baker Street, 2nd Floor
Houston, Texas 77002

OR2017-21385

Dear Mr. Collier:

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# 676014 (HSCO File #17SO6001431).

The Harris County Sheriff's Office (the "sheriff's office") received a request for certain information pertaining to United States Immigration and Customs Enforcement ("ICE") detainees. The sheriff's office 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. We have also received and considered comments from a representative of the requestor pursuant to section 552.304 of the Government Code. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

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." *Id.* § 552.101. This section encompasses section 236.6 of title 8 of the Code of Federal Regulations,¹ which protects information regarding detainees held on behalf of the United

¹Section 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).

States Department of Homeland Security (“DHS”).² 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 Service (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 Service 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; *see also id.* § 1.2 (defining Service as “U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and/or [ICE], as appropriate in the context in which the term appears”). The sheriff’s office asserts the information at issue pertains to detainees for the purposes of section 236.6. Based on this representation and our review, we agree the sheriff’s office is required to abide by rules promulgated by the DHS with regard to the 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, with 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. Therefore, we conclude the submitted information is made confidential by section 236.6 of title 8 of the Code of Federal Regulations and the sheriff’s office must withhold it from the requestor pursuant to 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 that because INS had authority to promulgate 8 C.F.R.

²We note that the functions of the Immigration and Naturalization Services (the “INS”) were transferred to the DHS on March 1, 2003. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002).

§ 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 676014

Enc. Submitted documents

c: Requestor
(w/o enclosures)