



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 9, 2019

Ms. Jennifer Burnett
Senior Attorney & Public Information Coordinator
University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2019-18491

Dear Ms. Burnett:

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# 771657 (OGC # 189213).

The University of Texas M.D. Anderson Cancer Center (the "university") received a request for all e-mail communications between a named individual and specified individuals and entities.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the interests of the Department of Health and Human Services (the "department") and the Federal Bureau of Investigations ("FBI"). *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments

¹We note the university sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed). Additionally, you state the university sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You also inform us the university received the required deposit on April 3, 2019. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

from the department and the FBI. 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. The department and the FBI assert portions of the submitted information are confidential under the provisions found in sections 552(b)(6) and 552(b)(7)(C) of the Freedom of Information Act (“FOIA”), section 552 of title 5 of the United States Code and the FBI additionally asserts certain information is confidential under section 552(b)(7)(A). Generally, FOIA applies only to federal agencies and does not apply to records held by state agencies. Open Records Decision No. 561 at 6 (1990). Section 552(b)(6) of FOIA exempts from public disclosure personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(6). Section 552(b)(7)(C) exempts records or information compiled for law enforcement purposes to the extent production of such law enforcement records or information could reasonably be expected constitute an unwarranted invasion of personal privacy. *See id.* § 552(b)(7)(C). Section 552(b)(7)(A) exempts records or information compiled for law enforcement purposes to the extent production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings. *See id.* § 552(b)(7)(A). Information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure merely because the same information is or would be confidential in the hands of a federal agency. *See, e.g.*, Attorney General Opinion MW-95; Open Records Decision No. 124 (1976).

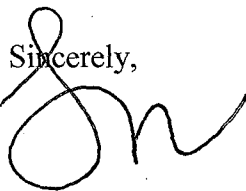
However, this office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. Attorney General Opinions H-917 (1976), H-836 (1974), Open Records Decision Nos. 561, 414 (1984), 388 (1983), 272 (1981), 183 (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 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 “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.” ORD 561 at 7.

We note the submitted information consists of communications between a university employee, the department, and the FBI, and includes information provided to the university by the FBI. Upon review, we find portions of the submitted information were provided to the university by the department and the FBI and are confidential under sections 552(b)(6) and 552(b)(7) of title 5 of the United States Code. Therefore, with the exception of the

information we have indicated for release, we conclude the university must withhold the information we indicated under section 552.101 of the Government Code in conjunction with federal law.² However, we find the remaining information at issue is contained in the records of the university, was submitted to either the department or the FBI, and is maintained by the university in relation to the official business of the university. See Gov't Code § 552.002(a)(1). Accordingly, the university may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with federal law and must release it.

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,


Jahna Ward
Assistant Attorney General
Open Records Division

JW/jxd

Ref: ID# 771657

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)

²As our ruling is dispositive, we need not address the FBI's remaining argument against disclosure of this information.