



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 15, 2019

Ms. LaNetra S. Lary
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2019-28809

Dear Ms. Lary:

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# 791111.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information related to a specified arrest. The sheriff's office claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the sheriff's office claims 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." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by statutes, such as section 236.6 of title 8 of the Code of Federal Regulations,¹ which protects information regarding detainees held on behalf of the United States Department of Homeland Security ("DHS").² This section provides as follows:

¹ 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).

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

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.

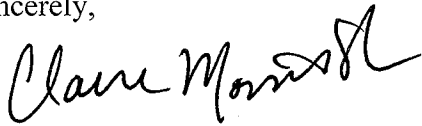
8 C.F.R. § 236.6; *see also id.* § 1.2 (defining Service as “U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and/or U.S. Immigration and Customs Enforcement, as appropriate in the context in which the term appears”). The submitted information pertains to a detainee for purposes of section 236.6. We understand the sheriff’s office is required to abide by rules promulgated by DHS with regard to detainees. *See id.* § 2.1 (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) (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 sheriff’s office does not provide our office with any applicable law, regulation, or executive order that provides the requestor with a right of access to the information at issue. We therefore conclude the submitted information is confidential pursuant to section 236.6 of title 8 of the Code of Federal Regulations. Accordingly, the sheriff’s office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 1103(a)(3) of title 8 of the United States Code (providing the Secretary of Homeland Security shall establish regulations necessary to carry out laws relating to immigration and naturalization) 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).³

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of the submitted information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/rm

Ref: ID# 791111

Enc. Submitted documents

c: Requestor
(w/o enclosures)