



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 4, 2020

Mr. Jonathan Miles
Open Records Attorney
Texas Department of State Health Services
P.O. Box 13247
Austin, Texas 78711-3247

OR2020-03252

Dear Mr. Miles:

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# 809968 (ORR# 20191024-9227).

The Texas Department of State Health Services (the "department") received a request for e-mail communications between any of sixteen department employees and thirteen categories of external parties related to specified topics.¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the department states it notified the United States Immigration and Customs Enforcement Health Services Corps ("ICE") and United States Centers for Disease Control ("CDC") of the request for information and the right to submit comments to this office why some of the submitted information should not be released.² See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be

¹ We note the department 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).

² As of the date of this letter, this office has not received comments from the CDC explaining why any of the submitted information should not be released.

released). We have received comments from ICE. We have considered the submitted arguments and reviewed the submitted representative sample of information.³

Section 552.101 of the Government Code exempts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. ICE asserts 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. 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). 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.

ICE informs this office portions of the submitted information were provided to the department by ICE. ICE also informs this office that it considers the information at issue to be confidential under the provisions found in sections 552(b)(6) and 552(b)(7)(C) of title 5 of the United States Code. *See* 5 U.S.C. §§ 552(b)(6), (b)(7)(C). Therefore, we conclude the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law.

Section 552.101 of the Government Code also encompasses information protected by other statutes. As part of the Texas Homeland Security Act (the “HSA”), sections 418.176

³ We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. Section 418.181 of the Government Code provides as follows:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

Gov't Code § 418.181. The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the information at issue relates to the Port of Laredo (the "port"). You argue, and we agree, the port is critical infrastructure for purposes of section 418.181 of the Government Code. *See generally id.* § 421.001(2) (defining "critical infrastructure" to include "all public or private assets, systems, and functions vital to the security, governance, public health and safety, economy, or morale of the state or the nation"). You state the information at issue is the Multiagency Communicable Disease Response Plan for the port. You explain the plan establishes the coordinated response protocols and the operations that will take place in the event of a communicable disease outbreak at the port. Based on your representations and our review, we find the department has demonstrated release of the information at issue would identify the technical details of particular vulnerabilities of the port to an act of terrorism. Thus, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.⁴

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law. The department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The department must release the remaining 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

⁴ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KM/mo

Ref: ID# 809968

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)