



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 10, 2020

Ms. Madeleine Connor
TVC General Counsel
Texas Veterans Commission
P.O. Box 12277
Austin, Texas 78711-2277

OR2020-28233

Dear Ms. Connor:

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# 853249 (TVC# 2020-15).

The Texas Veterans Commission (the "commission") received a request for e-mails and attachments between three named individuals during a certain time period.¹ You state the commission has released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor excludes the personally identifying information of veterans. Accordingly, the information we have marked is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the

¹ We note the commission 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).

request and the commission is not required to release such information in response to this request.²

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. This section encompasses information other statutes make confidential. You claim the responsive information is protected by the Privacy Act of 1974, section 552a of title 5 of the United States Code (“Federal Privacy Act”). The Federal Privacy Act applies to an “agency,” which is defined as “any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency[.]” See 5 U.S.C. §§ 552(f)(1) (formerly 5 U.S.C. § 552(e)), 552a(a)(1) (referring to 5 U.S.C. § 552(e) for definition of “agency”). Section 552a(b) of the Federal Privacy Act provides, “[n]o agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains[.]” 5 U.S.C. § 552a(b). You assert the remaining responsive information is information the commission provided to the United State Department of Veterans Affairs relating to a certain federal program. However, our office and the courts have stated the Federal Privacy Act applies only to federal agencies, and not to state or local agencies. See *St. Michael’s Convalescent Hosp. v. State of California*, 643 F.2d 1369, 1373 (9th Cir. 1981) (definition of agency under Privacy Act does not encompass state agencies or bodies); *Shields v. Shetler*, 682 F. Supp. 1172, 1176 (D. Colo. 1988) (Privacy Act does not apply to state agencies or bodies); Attorney General Opinion MW-95 at 2 (1979) (neither FOIA nor federal Privacy Act applies to records held by state or local governmental bodies in Texas). The courts have also opined that neither the receipt of federal funds nor limited oversight by a federal entity convert state or local governmental bodies into agencies covered by the Privacy Act. See *St. Michael’s Convalescent Hosp.*, 643 F.2d at 1373-74; see also *United States v. Orleans*, 425 U.S. 807, 816 (1976) (federal regulations and contract provisions do not convert acts of local and state governmental bodies into federal governmental acts.). Upon review of your arguments, we find you have failed to demonstrate the Federal Privacy Act applies to the information at issue, and the commission may not withhold any of the responsive information under section 552.101 of the Government Code on that basis. The commission must release the responsive 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

² As we are able to make this determination, we need not address your arguments 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/jxd

Ref: ID# 853249

Enc. Submitted documents

c: Requestor
(w/o enclosures)