



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 11, 2022

Mr. Matthew Entsminger
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2022-19904

Dear Mr. Entsminger:

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# 958438 (ORR# 1045757-1).

Travis County Emergency Services (the "county") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the county provides documentation showing it has notified the National Transportation Safety Board (the "NTSB") of the right to submit comments to this office why some of the submitted information should not be released.¹ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have also received and considered comments from the requestor. *See id.* We have considered the exception you claim and reviewed the submitted representative sample of information.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." *Id.* § 552.101. Section 552.101 encompasses information that other statutes make confidential.

¹ As of the date of this letter, this office has not received comments from NTSB explaining why any of the submitted information should not be released.

² 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.

You raise section 552.101 in conjunction with section 831.13 of title 49 of the Code of Federal Regulations, which applies to the release of information concerning accident investigations by the NTSB. 49 C.F.R. § 831.13; *see also* 49 U.S.C. § 1101 et seq.; *see also* 49 U.S.C. § 1113(f) (providing NTSB “may prescribe regulations to carry out [chapter 11 of title 49 of the United States Code]”). This office has determined a federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 599 at 4 (1992). Section 831.13(c)(4)(III) provides:

(c) Release of information. Parties [to an investigation] are prohibited from releasing information obtained during an investigation at any time prior to the NTSB’s public release of the information unless the release is consistent with the following criteria:

...

(4) [F]actual information related to the investigation must be approved by the [investigator-in-charge] prior to release, including:

...

(iii) Information related to the investigation released to an organization or party that is not a party to the investigation[.]

49 C.F.R. § 831.13(c)(4)(iii). You assert the county is a participant and party to the NTSB investigation. We understand you have not received approval from the NTSB investigator-in-charge to release the submitted information or that the submitted information has been released by the NTSB. Thus, we conclude, unless the county receives consent to release the information at issue from the NTSB investigator-in-charge, the county must withhold the submitted information under section 552.101 in conjunction with section 1113(f) of title 49 of the United States Code and section 831.13(c) of title 49 of the Code of Federal Regulations.³

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

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

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,

Pearlie Gault
Assistant Attorney General
Open Records Division

PG/mo

Ref: ID# 958438

Enc. Submitted documents

c: Requestor
(w/o enclosures)