



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 12, 2022

Ms. Amanda Diane Austin  
Assistant District Attorney  
Civil Litigation Division  
Hidalgo County  
100 East Cano Street  
Edinburg, Texas 78539

OR2022-31353

Dear Ms. Austin:

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# 974221 (Reference No. 2022-0134-DA).

The Hidalgo County Criminal District Attorney's Office (the "district attorney's office") received a request for certain communications regarding a certain case involving a named individual. The district attorney's office claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. Additionally, the district attorney's office states, and provides documentation showing, it notified the United States Customs and Border Protection (the "CBP") of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released). We have received comments from the CBP. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. CBP asserts the submitted information is confidential under the provisions found in sections 552(b)(7)(A) and 552(b)(7)(E) 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)(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* 5 U.S.C. § 552(b)(7)(A). Section 552(b)(7)(E) exempts records or information compiled for law enforcement purposes to the extent production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. *See id.* § 552(b)(7)(E). 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 was provided to the United States Marshals Service by the CBP. We also note the information was subsequently shared with the district attorney’s office. The CBP informs this office it considers the information at issue confidential under the provisions found in sections 552(b)(7)(A) and 552(b)(7)(E) of title 5 of the United States Code. Accordingly, we conclude the district attorney’s office must withhold the submitted information under section 552.101 of the Government Code in conjunction with federal law.<sup>1</sup>

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->

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<sup>1</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

[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,

James M. Graham  
Assistant Attorney General  
Open Records Division

JMG/mo

Ref: ID# 974221

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: 1 Third Party  
(w/o enclosures)