OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

February 11, 2002

Mr. Edward H. Perry
Assistant City Attorney
City of Dallas
1500 Marilla, 7DN
Dallas, Texas 75201

OR2002-0616

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158541.

The City of Dallas (the "city") received a request for a list of all people issued security clearance badges by Love Field. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. You have provided us with an October 4, 2001 memorandum from the Federal Aviation Administration ("FAA") precluding the release of security information relating to airports.[1] We have considered your arguments and reviewed the representative sample of information submitted.

Section 40119 of title 49 of the United States Code states in relevant part that "[n]otwithstanding section 552 of title 5, the [FAA] Administrator shall proscribe regulations prohibiting disclosure of information obtained or developed in carrying out security or research and development activities . . . ." The regulations promulgated in accordance with section 40119 are expansive. First, section 191.1(a) of title 14 of the Code of Federal Regulations explains that Part 191 governs the release by the FAA or *by other persons* of records and information concerning security activities. Second, section 191.3(a) states in relevant part that "notwithstanding 5 U.S.C. 522 or *other laws*, the records and information described in Secs. 191.7 and 191.3(b) are not available for public inspection or copying, nor is information contained in those records released to the public." (emphasis added). With respect to the two provisions referenced in section 191.3(a), section 191.7 defines sensitive security information, and section 191.3(b) concerns information developed in the conduct

[1]The memorandum also plainly states that federal law is preeminent over state and local law with respect to requests like the one at issue here.

of security or research and development activities. The definition of sensitive security information includes any approved or standard security program for an airport operator. *See* 14 C.F.R. § 191.7(a). Finally, section 191.5 mandates that requests for sensitive security information and information developed from security or research and development activities must be referred to the FAA Administrator. Based upon this statutory scheme, we conclude that the decision to release or withhold the requested information is one for the FAA Administrator, not this office. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law preempted to extent it actually conflicts with federal law); *see also Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Therefore, in responding to this request, the city must comply with the FAA's directives on the matter.[2]

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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[2]Having reached this conclusion, we need not address your arguments under sections 552.101, 552.102, or 552.108.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Kevin J. White
Assistant Attorney General
Open Records Division

KJW/sdk

Ref: ID# 158541

Enc. Submitted documents

c: Mr. Chris Heinbaugh
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(w/o enclosures)