



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 8, 2006

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2006-01326

Dear Ms. Smith:

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# 241855.

The Texas Department of Public Safety (the "department") received three requests for information pertaining to registered sex offenders evacuated to Texas as a result of Hurricane Katrina or Hurricane Rita. You state that the department does not maintain information responsive to the request for information pertaining to registered sex offenders from Alabama or Mississippi.<sup>1</sup> You also state that you will release correspondence communicated by the department to local law enforcement agencies pertaining to the registration of evacuee sex offenders but claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>2</sup> Gov't Code § 552.101. This

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

exception encompasses information that other statutes make confidential, including the Privacy Act of 1974 (the "Privacy Act"), section 552a of title 5 of the United States Code. This office has held that section 552.101 requires a local governmental entity that has obtained information from a federal agency to respect confidentiality imposed on the information by federal law. *See* Open Records Decision No. 561 (1990). That decision involved a request for certain information that the City of Pearland had obtained from the United States Department of Justice (the "DOJ"). This office was informed that the DOJ had denied the same requestor access to the same information. The federal agency considered the information to be confidential as a matter of federal law. We concluded that 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. *See* Open Records Decision No. 561 at 7 (1990).<sup>3</sup>

The Privacy Act provides in part "[n]o [federal] 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, unless disclosure would be" allowed by one of twelve enumerated exceptions. 5 U.S.C. § 552a(b). The Privacy Act permits the release of information for a law enforcement purpose. *Id.* § 552a(b)(7).

Upon review of the submitted information, we find that it consists of lists of applicants for federal emergency assistance compiled by FEMA and provided to the department for a law enforcement purpose. We therefore find that the submitted information is confidential pursuant to the Privacy Act, and it retained its confidentiality when it was transferred to the department. Release of the submitted information in response to the present request would not be a release in accordance with the exceptions to the Privacy Act. Therefore, the submitted information must be withheld under section 552.101 of the Government Code in conjunction with federal law. As our ruling on this issue is dispositive, we need not address your remaining arguments.

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

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<sup>3</sup>Likewise, this office has often said that a transfer of confidential information between agencies of state government does not destroy the confidentiality of the information. *See* Attorney General Opinions H-917 (1976), H-836 (1974), Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

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 Dep't of Pub. 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 Office of the Attorney General 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/segh

Ref: ID# 241855

Enc. Submitted documents

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