



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2011

Ms. Laura Ingram
Assistant District Attorney
Wichita County
900 Seventh Street
Wichita Falls, Texas 76301

OR2011-12815

Dear Ms. Ingram:

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# 428952.

The Wichita County Sheriff's Office (the "sheriff") received a request for all records pertaining to the current detention of a named inmate. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 exception encompasses information that is made confidential by other statutes. Section 552.101 encompasses section 236.6 of title 8 of the Code of Federal Regulations,¹ which protects information regarding detainees held on behalf of the Immigration and Naturalization Service (the "INS").² This section provides as follows:

¹Section 552.101 encompasses information that other statutes make confidential. A federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. See Open Records Decision No. 476 (1987) (addressing statutory predecessor).

²We note that the functions of the INS were transferred to the Department of Homeland Security on March 1, 2003. See Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002). However, as section 236.6 still refers to the agency at issue as "the INS," we will also do so in this ruling.

No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the [INS] (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the [INS] and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

8 C.F.R. § 236.6. We note the submitted information pertains to an INS detainee. Upon review, we find the sheriff is required to abide by rules promulgated by the INS with regard to INS detainees. *See id.* § 2.1 (providing that Secretary of Homeland Security may issue regulations to administer and enforce laws relating to immigration and naturalization of aliens); *see also ACLU of N.J., Inc. v. County of Hudson*, 799 A.2d 629 (N.J. 2002) (stating that while state possesses sovereign authority over operation of its jails, it may not operate them, in respect to INS detainees, in any way that derogates federal government's exclusive and expressed interest in regulating aliens). You do not provide our office with any applicable federal law, regulation, or executive order that provides the requestor with a right of access to the information at issue. We therefore conclude the submitted information pertains to an INS detainee and is made confidential by section 236.6 of title 8 of the Code of Federal Regulations and must be withheld from the requestor under section 552.101 of the Government Code.³ *See ACLU*, 799 A.2d at 655 (concluding that because INS had authority to promulgate 8 C.F.R. § 236.6, provision preempts state law requiring disclosure of requested information); *see also English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *La. 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).

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.

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

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in blue ink, appearing to read 'VB', with a long horizontal line extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 428952

Enc. Submitted documents

c: Requestor
(w/o enclosures)