



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2011

Ms. Susana Carbajal Gonzalez
Assistant City Attorney
City of Austin Aviation Department
Austin-Bergstrom International Airport
3600 Presidential Boulevard, Suite 411
Austin, Texas 78719

OR2011-18601

Dear Ms. Carbajal Gonzalez:

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# 439334.

The City of Austin (the "city") received a request for the "passenger, mail and cargo stats from 2000 to 2010 from Austin to London, Paris and Frankfurt." You state the city has no information responsive to the mail and cargo statistics.¹ You claim the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception 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 office has held the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. Attorney

¹We note that 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).

General Opinions H-917 (1976), H-836 (1974); Open Records Decision Nos. 561 (1990), 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 that decision, we noted the general rule that section 552 of title 5 of the United States Code, the federal Freedom of Information Act, applies only to federal agencies and does not apply to records held by state agencies. ORD 561 at 6. Further, we stated information is not confidential when in the hands of a Texas agency simply because the same information is confidential in the hands of a federal agency. *Id.* However, 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.” *Id.* at 7.

You inform us the city received the information at issue from the United States Department of Transportation (the “DOT”) subject to the city’s agreement to protect this information from unauthorized use or disclosure. The city explains, and provides documentation showing, the submitted information was derived from the International Passenger Origin-Destination Survey (the “survey”) and the DOT considers this information to be confidential pursuant to section 19-7 of part 241 of title 14 of the Code of Federal Regulations. *See* 14 C.F.R. § 19-7 (providing data collected in survey shall be disclosed only pursuant to section 19-7 or by DOT in accordance with its regulatory functions and responsibilities). You also state, and provide documentation showing, the DOT required the city to sign a certification wherein the city agreed to abide by the requirements of section 19-7 of part 241 of title 14 of the Code of Federal Regulations. The city further states the requestor is not a party who has been granted access to the data by the DOT under section 19-7 of part 241 of title 14 of the Code of Federal Regulations. Therefore, based on your representations and our review, we agree the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with federal law.

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 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 cursive script, appearing to read "Jennifer Burnett", with a horizontal line extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 439334

Enc. Submitted documents

c: Requestor
(w/o enclosures)