



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2014

Ms. Jordan Hale
Assistant Attorney General
Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2014-20818

Dear Ms. Hale:

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# 543792 (OAG PIR No. 14-38748).

The Office of the Attorney General (the "OAG") received a request for a specified affidavit sent to the OAG by the Oklahoma Department of Public Safety ("Oklahoma"). You state the OAG is releasing most of the requested information. We understand the OAG takes no position with respect to the remaining requested information, however, you state Oklahoma objects to release to a portion of the information at issue. We have received and considered comments submitted by Oklahoma and have reviewed the submitted information. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information made confidential by statute. Oklahoma asserts the information at issue, which was sent to the OAG by Oklahoma, is confidential under section 1015(B) of Title 22 of the Oklahoma Statutes. This statute provides, in pertinent part, "The identity of all persons who participate in or administer the execution process and persons who supply the drugs, medical supplies or medical equipment for the execution shall be confidential[.]" *See* OKLA. STAT. tit. 22, § 1015(B).

In Open Records Decision No. 661 (1999), this office concluded whether a governmental entity may release information to another governmental entity is not a question under the Act as the Act is concerned with the required release of information to the *public*. Gov't Code §§ 552.001, .002, .021; *see* Attorney General Opinions H-683 (1975), H-242 (1974), M-713 (1970); Open Records Decision No. 655 (1997). For many years, this office has recognized it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); ORD 655. *But see* Attorney General Opinions DM-353 at 4 n.6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute's enumerated entities), JM-590 (1986) (same); Open Records Decision Nos. 655 (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that information may be transferred between governmental bodies within the state without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836, H-242, M-713; Open Records Decision Nos. 655, 561 (1990), 414 (1984). Moreover, the release of information by one state agency to another state agency is not a release to the public for the purposes of section 552.007 of the Government Code, which prohibits the selective disclosure of information, or for purposes of section 552.352, which provides criminal penalties for the release of information that is considered to be confidential. Open Records Decision No. 516 (1989).

In this case, the public policy that encourages the exchange of information between Oklahoma and the OAG is as strong as when the exchange is between Texas agencies. *See* ORD 561 at 7. Public policy advocates continued cooperation between governmental bodies. *See id.* Oklahoma argues release of the information at issue could likely reveal the identity of individuals who participated in the execution process in the State of Oklahoma. However, upon review, we find the information at issue does not identify any individuals. As such, we find Oklahoma has failed to demonstrate how the information at issue reveals the identity of individuals who participate in or administer the execution process or individuals who supply the drugs, medical supplies or medical equipment for the execution for the purposes of section 1015(B). Consequently, the OAG may not withhold the information at issue under section 552.101 in conjunction with section 1015(B) of Title 22 of the Oklahoma Statutes.

Section 552.101 of the Government Code also encompasses information made confidential by judicial decision and the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119. Oklahoma contends

the release of the information at issue would likely identify individuals who participated in an execution in the State of Oklahoma and would create a substantial threat of physical harm to those individuals. Upon review of Oklahoma's arguments and the information at issue, we find Oklahoma has failed to demonstrate how the information at issue would create a substantial threat of physical harm to any identified individuals. Thus, the OAG may not withhold the information at issue under section 552.101 in conjunction with the common-law physical safety exception. As no further exceptions have been raised, the OAG must release the submitted information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 543792

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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