



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 16, 2015

Ms. Ann-Marie Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767-1748

OR2015-14481

Dear Ms. Sheely:

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# 571807.

Travis County Emergency Services (the "county") received several requests for information related to a STAR Flight incident on April 27, 2015, including personnel records of county personnel involved in the incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You state the county does not have video responsive to some of the requests. You also note some of the requests ask the county to answer questions. The Act does not require a governmental body to answer general questions, perform legal research, or create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); *Open*

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open Records Decision No. 561 at 8-9 (1990). Therefore, while the county is not required to create information in response to the questions at issue, documents from which this information may be derived would be responsive to this request. In this instance, you have submitted information for our review. Therefore, we assume the county has made a good-faith effort to locate any information responsive to the requests at issue, and we will address your claimed exceptions for the submitted information.

Next, you state the county inadvertently provided some requestors access to a portion of the requested information. We note the Act does not permit selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *but see* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to Gov't Code § 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to Gov't Code § 552.108). In this instance, you inform us that the release was inadvertent. We note a governmental body is not precluded from invoking an exception to further public disclosure of information that has been released on a limited basis through no official action and against the wishes and policy of the governmental body. *See* Open Records Decision No. 376 at 2 (1983); *see also* Open Records Decision No. 387 at 3 (1983) (information that is not voluntarily released by a governmental body, but nevertheless comes into another party's possession, is not henceforth automatically available to everyone). Based on your representations, we find there was no voluntary release of information in this instance. Accordingly, we will consider your arguments against disclosure of all the information at issue.

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 other statutes make confidential. You raise section 552.101 in conjunction with section 831.13 of title 49 of the Code of Federal Regulations, which applies to the release of information concerning accident investigations by the National Transportation Safety Board (the "NTSB"). This office has determined that a federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 599 at 4 (1992). Section 831.13 states in relevant part:

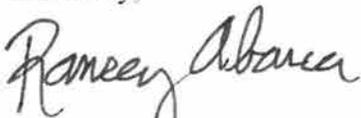
(b) All information concerning the accident or incident obtained by any person or organization participating in the investigation shall be passed to the [investigator-in-charge] through appropriate channels before being provided to any individual outside the investigation. Parties to the investigation may relay to their respective organizations information necessary for purposes of prevention or remedial action. However, no information concerning the accident or incident may be released to any person not a party representative to the investigation (including non-party representative employees of the party organization) before initial release by the Safety Board without prior consultation and approval of the [investigator-in-charge].

49 C.F.R. § 831.13(b). You state that the submitted information consists of records involved in a pending and ongoing investigation by the NTSB. You state, and provide documentation showing, the county is a participant and named party to the NTSB investigation. You also state the county has not received approval from the NTSB investigator-in-charge to release the requested information or that the requested information has been released by the NTSB. Thus, we conclude that unless the county receives consent to release the information at issue from the NTSB investigator-in-charge, the county must withhold the requested information under section 552.101 in conjunction with federal law.²

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ref: ID# 571807

Enc. Submitted documents

c: 11 Requestors
(w/o enclosures)