



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2016

Mr. William T. Higgins V
Assistant Criminal District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196

OR2015-19673A

Dear Mr. Higgins:

This office issued Open Records Letter No. 2015-19673 (2015) on September 21, 2015. Since that time, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on September 21, 2015. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). This ruling was assigned ID# 594084.

Tarrant County (the "county") received several requests for a specified letter and information pertaining to the termination of employees from the county passport office. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the United State Department of State (the "State Department"). *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted information, which we have marked, is not responsive to the requests at issue because it does not consist of the specified letter or information pertaining to the termination of employees from the county passport office. This ruling does not address the public availability of that information, and the county need not release any non-responsive information. However, the State Department asserts the reference guide submitted by the county is not responsive to the instant requests. A governmental body

must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the county has reviewed its records and determined the information at issue is responsive to the requests. Thus, we find the county has made a good-faith effort to relate the requests to information within its possession or control. Accordingly, we find the reference guide is responsive to the requests and will determine whether the county must release the information at issue under the Act.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. *See* Attorney General Opinions H-917 (1976), H-836 (1974); Open Records Decision Nos. 561, 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 (“FOIA”), 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.

The State Department informs this office the submitted reference guide was provided to the county by the State Department. The State Department informs this office that it considers portions of the information at issue to be confidential under the provisions found in section 552(b)(7)(E) of title 5 of the United States Code. *See* 5 U.S.C. § 552(b)(7)(A) (agency may withhold information compiled for law enforcement purposes, but only to the extent production of information could reasonably be expected to interfere with enforcement proceedings). Therefore, we conclude the county must withhold the information the State Department has indicated under section 552.101 of the Government Code in conjunction with federal law.¹

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

We understand the county to claim the remaining information at issue is protected by the Privacy Act of 1974, section 552a of title 5 of the United States Code (“Federal Privacy Act”). Section 552a(b) of the Federal Privacy Act provides, “[n]o 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[.]” 5 U.S.C. § 552a(b). However, our office and the courts have stated the Federal Privacy Act applies only to federal agencies, and not to state or local agencies. *See St. Michael’s Convalescent Hosp. v. State of California*, 643 F.2d 1369, 1373 (9th Cir. 1981) (definition of agency under Privacy Act does not encompass state agencies or bodies); *Shields v. Shetler*, 682 F. Supp. 1172, 1176 (D. Colo. 1988) (Privacy Act does not apply to state agencies or bodies); Attorney General Opinion MW-95 at 2 (1979) (neither FOIA nor federal Privacy Act applies to records held by state or local governmental bodies in Texas). The courts have also opined that neither the receipt of federal funds nor limited oversight by a federal entity convert state or local governmental bodies into agencies covered by the Privacy Act. *See St. Michael’s Convalescent Hosp.*, 643 F.2d at 1373-74; *see also United States v. Orleans*, 425 U.S. 807, 816 (1976) (federal regulations and contract provisions do not convert acts of local and state governmental bodies into federal governmental acts.). Upon review of the county’s arguments, we find the county has failed to demonstrate the Federal Privacy Act applies to the remaining responsive information at issue, and the county may not withhold any of it under section 552.101 of the Government Code on that basis.

Section 552.117(a)(1) of the Government Code exempts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code.² *See Gov’t Code § 552.117(a)*; Open Records Decision No. 622 (1994). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5* (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. We have marked the personal information of a former county employee. If the employee whose personal information is at issue timely elected to keep her information confidential pursuant to section 552.024, the county must withhold the information we have marked under section 552.117(a)(1). The county may not withhold this information under section 552.117(a)(1) if the employee did not timely elect to keep her information confidential pursuant to section 552.024.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

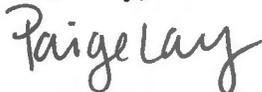
Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, or an e-mail address a governmental entity maintains for one of its officials or employees. You do not indicate the owners of the e-mail addresses in the submitted information have consented to public release of their e-mail addresses. Thus, to the extent the submitted e-mail addresses are not subject to subsection (c), we find the county must withhold them under section 552.137 of the Government Code.

In summary, the county must withhold the information the State Department has indicated under section 552.101 of the Government Code in conjunction with federal law. If the employee whose personal information is at issue timely elected to keep her information confidential pursuant to section 552.024, the county must withhold the information we have marked under section 552.117(a)(1) of the Government Code. To the extent the submitted e-mail addresses are not subject to subsection (c), the county must withhold them under section 552.137 of the Government Code. The remaining responsive information must be released.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/dls

Ref: ID# 594084

Enc. Submitted documents

cc: Requestors
(w/o enclosures)

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