



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 30, 2015

Mr. Evaristo Garcia, Jr.
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2015-22781

Dear Mr. Garcia:

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# 585254 (Ref. No. W020266-081815).

The City of McAllen (the "city") received a request for the 9-1-1 audio tapes pertaining to a specified plane crash. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims 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. Section 552.101 encompasses information that other statutes make confidential. The city raises 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). The city states the submitted information consists of records involved in a pending and ongoing investigation by the NTSB. The city states, and provides documentation showing, the city is a participant and named party to the NTSB investigation. The city also states it has not received approval from the NTSB investigator-in-charge to release the submitted information or that the submitted information has been released by the NTSB. Thus, we conclude that unless the city receives consent to release the information at issue from the NTSB investigator-in-charge, the city must withhold the submitted information under section 552.101 in conjunction with federal law.¹

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 585254

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address the city's remaining argument against disclosure.