



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2016

Ms. Cari Bernstein
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2016-07317

Dear Ms. Bernstein:

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# 604303 (DPS PIR No. 16-0187).

The Texas Department of Public Safety (the "department") received a request for information pertaining to damage assessments and allocation of federal funds relating to specified events during specified time periods. 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.

Initially, we note some of the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-26465 (2015). In that ruling, we determined the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with the Federal Privacy Act. We have no indication there has been any change in the law, facts, or circumstances on which the prior ruling was based. Accordingly, for the submitted information that is identical to the information previously requested and ruled upon by this office, we conclude the department must continue to rely on Open Records Letter No. 2015-26465 as a previous determination and withhold the identical information in

accordance with that ruling.¹ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address your argument against release of the submitted information that is not encompassed by Open Records Letter No. 2015-26465.

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 section encompasses information protected by other statutes, such as section 552a of title 5 of the United States Code, also known as the Federal Privacy Act. We note that this office has stated in numerous opinions that information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure merely because the same information is or would be confidential in the hands of a federal agency. *See, e.g.*, Attorney General Opinion MW-95 (1979) (concluding that neither the federal Freedom of Information Act nor the federal Privacy Act applies to records held by state or local governmental bodies in Texas). However, this office has also held that section 552.101 requires a local governmental entity that has obtained information from a federal agency to respect confidentiality imposed on the information by federal law. *See* Open Records Decision No. 561 (1990).

The Privacy Act provides in part “[n]o [federal] 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, unless disclosure would be” allowed by one of twelve enumerated exceptions. 5 U.S.C. § 552a(b).

You state the remaining information at issue pertains to detailed damage assessments and the allocation of federal funds relating to the specified severe storms, which resulted in disaster declarations and the allocation of federal funds to individual jurisdictions under the Individual Assistance and Public Assistance programs. You inform us the department has an agreement with the Federal Emergency Management Agency (“FEMA”) to administer these programs. You explain the department received and maintains the information at issue due to its participation in the programs, and pursuant to your agreement with FEMA, the department is required to maintain the privacy of this information pursuant to the Privacy Act. Thus, we find the information at issue is confidential pursuant to the Privacy Act. Release of this information in response to the present request would not be a release in accordance with the exceptions to the Privacy Act. Therefore, we conclude the department

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

must withhold the remaining information at issue under section 552.101 of the Government Code in conjunction with the Federal Privacy Act.

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/bw

Ref: ID# 604303

Enc. Submitted documents

c: Requestor
(w/o enclosures)