



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 9, 2016

Ms. Susan E. Tennyson
Open Records Attorney
Texas Department of Family and Protective Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2016-20347

Dear Ms. Tennyson:

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# 625865 (Ref. No. 06202016PL7).

The Texas Department of Family and Protective Services (the "department") received a request for 1) a specified department manual, 2) specified information pertaining to special task units, and 3) information pertaining to a specified survey. You state you have released some information to the requestor. 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.

You assert the department should be able to withhold the submitted survey responses because the department told the survey respondents their responses would be kept confidential. However, we note information is not confidential under the Act simply because the party that submits the information anticipates it will be kept confidential or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); *see also* Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information did not satisfy requirements of statutory predecessor to Gov't Code § 552.110). Consequently, unless the submitted survey responses fall within an exception to disclosure,

the department must release them, notwithstanding any expectations or agreement specifying otherwise.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 48.006 of the Human Resources Code provides the following:

(a) Subject to the availability of funds, the department shall develop a community satisfaction survey that solicits information regarding the department’s performance with respect to providing investigative and adult protective services. In each region, the department shall send the survey at least biennially to:

- (1) stakeholders in the adult protective services system, including local law enforcement agencies and prosecutors’ offices;
- (2) protective services agencies, including nonprofit agencies; and
- (3) courts with jurisdiction over probate matters.

(b) The department shall send the results of each region’s survey to:

- (1) the region for evaluation by regional and program administrators and implementation of changes necessary to address community concerns;
- (2) the presiding judge of the statutory probate courts in that region; and
- (3) courts with jurisdiction over probate matters in that region.

(c) The department may not include any confidential information in the results of the survey provided under Subsection (b)(2) or (3) unless ordered by a court.

Hum. Res. Code § 48.006. You assert the submitted survey responses are confidential under subsection 48.006(c) of the Human Resources Code. However, we note section 48.006(c) restricts the inclusion of confidential information in the results of the survey when such results are sent pursuant to subsections 48.006(b)(2) and (3) and does not, itself, make information confidential for purposes of the Act. *See id.* § 48.006(c); Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Thus, the department may not withhold the submitted survey

responses under section 552.101 of the Government Code in conjunction with subsection 48.006(c) of the Human Resources Code.

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). However, section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Additionally, section 552.137 does not apply to the private e-mail addresses of government officials who use their private e-mail addresses to conduct official government business. *Austin Bulldog v. Leffingwell*, No. 03-13-00604-CV, 2016 WL 1407818 (Tex. App.—Austin April 8, 2016, no pet.) (mem. op.). Accordingly, the department must withhold the personal e-mail addresses in the submitted survey responses under section 552.137, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release, the e-mail addresses belong to government officials who use their private e-mail addresses to conduct official government business, or subsection (c) applies. The department must release the remaining 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/bw

Ref: ID# 625865

Enc. Submitted documents

c: Requestor
(w/o enclosures)