



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 2, 2020

Ms. M.L. Calcote
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

House Managers

EX. 045

Dear Ms. Calcote:

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# 828822 (ORR# 20-0983).

The Texas Department of Public Safety (the "department") received a request for communications regarding specified topics and a specified address. The department claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. The department also states, and provides documentation showing, it notified the Federal Bureau of Investigation (the "FBI") of the department's receipt of the request for information and of the FBI's right to submit arguments to this office as to why the requested information should not be released.¹ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exception and reviewed the submitted information. We have also received and considered comments submitted by FBI.

We note the requested information is the subject of pending litigation in *Joseph Larsen v. Texas Department of Public Safety*, Cause No. D-1-GN-20-002155, in the 459th Judicial District, Travis County, Texas. Notwithstanding pending litigation, our office generally will issue a determination under Government Code section 552.306 where our office has not previously ruled on the precise information at issue. *See* Open Records Decision No. 687 at 3 (2011) ("Section 552.306 does not authorize [this office] to refuse to perform the duty to issue an open records ruling simply because the same disclosure question is pending before a Texas Court."). However, in this instance, we note the litigation at issue and the corresponding determination regarding applicability of the claimed exceptions involve factual questions that can be more appropriately—and conclusively—addressed through the

¹ Although the department received the request on March 12, 2020, the department did not notify the FBI of the department's receipt of the request until May 5, 2020. Our office received comments from the FBI on May 15, 2020.

judicial process where the parties may engage in discovery and more fully develop their factual claims and defenses.

Additionally, the failure of DPS to timely notify the FBI of the underlying request and the FBI's provision of substantially redacted comments to the requestor prevents our office from issuing a ruling in accordance with the statutory requirements specified in section 552.306 of the Government Code. *See Gov't Code § 552.306* (providing that the attorney general shall promptly render a requested decision "consistent with the standards of due process"). Accordingly, we are closing our file assigned ID# 828822 without issuing a decision and will allow the trial court to determine whether the information at issue must be released to the public.

Sincerely,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/rm

Ref: ID# 828822

Enc. Submitted documents

c: Requestor
(w/o enclosures)