



October 25, 2002

Mr. Steve Smith
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966

OR2002-6058

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170530.

The City of San Antonio (the "city") received a written request for "an electronic copy of any and all records that detail all city payments in the last and current fiscal year."¹ You state that most of the responsive information has been released to the requestor. You contend, however, that the remaining information coming within the scope of the request is excepted from required disclosure pursuant to section 552.101 of the Government Code.

We note at the outset that you acknowledge that you did not make a timely request for a decision from this office. Section 552.301(a) of the Government Code requires a governmental body to request a decision from the attorney general within ten business days after receiving a request for information that the governmental body wishes to withhold, unless there has been a previous determination that the requested information is excepted from required public disclosure. You state that the city received clarification of the records request on April 22, 2002. However, you did not request a decision from this office until August 5, 2002. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381. A compelling reason for withholding

¹The requestor states that he essentially seeks the city's checkbook.

information is demonstrated where information is made confidential by other law or where third party interests are at issue. Open Records Decision No. 150 (1977).

We also note that the submitted records consist of information subject to section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The city must release the submitted information except to the extent it is expressly made confidential under other law. Because you contend that the submitted information is excepted from disclosure pursuant to sections 552.101, 552.107(1), 552.108, and 552.109 of the Government Code. However, because section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," we will consider your section 552.101 claims.

Section 552.101 encompasses information made confidential by other statutes. You first contend that information revealing the monies paid by the city in administering Housing Opportunities for Persons with AIDS ("HOPWA") grants are made confidential under federal law. The stated purpose of HOPWA is "to provide States and localities with the resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome and families of such persons." 42 U.S.C. § 12901. Section 12905(e) of chapter 42 of the United States Code requires that the city "agree to ensure the confidentiality of the name of any individual assisted with amounts from a grant under this chapter *and any other information regarding individuals receiving such assistance*" (emphasis added); *see also* 24 C.F.R. § 574.440. We believe that the intent of this confidentiality provision is to keep confidential information that would tend to identify individual patients with AIDS and thereby prevent housing discrimination against such individuals.²

²*See generally Housing Needs of Persons With Acquired Immune Deficiency Syndrome (AIDS): Hearings before the Subcomm. on Housing and Community Development of the House Banking, Finance, and Urban Affairs Comm., 101st Cong. (1990) (hearing devoted to housing problems of persons with AIDS, their causes, such as discrimination, and their remedies); see also National Housing Policy Conference and Public Hearing: Hearings before the Subcomm. on Housing and Urban Affairs, Senate Banking, Housing, and Urban Affairs Comm. and the Subcomm. on Housing and Community Development, House Banking, Finance, and*

You describe the payees who receive the HOPWA grants as landlords, apartment complexes, and financial institutions. We thus understand from this representation that none of the payees is actually an individual suffering from AIDS; rather, the payees receive the grant monies to provide housing assistance to persons with AIDS and their families. The question we must address, therefore, is whether the identity of a landlord, apartment complex, or financial institution receiving HOPWA grant monies from the city constitutes "information regarding individuals receiving such assistance."

After careful review of the legislative background of HOPWA, and after consulting with the United States Department of Housing and Urban Development ("HUD"), we believe that releasing the identities of landlords and apartment complexes receiving HOPWA grants could in some instances reveal the identities of individuals with AIDS. We therefore conclude that releasing the identities of landlords and apartment complexes receiving HOPWA grant monies could conflict with the Congressional intent to protect the identities of people with AIDS. Accordingly, we conclude that the city must withhold such information pursuant section 12905. On the other hand, HUD has indicated to this office that it would be much more unlikely that the release of the identities of mortgage lenders receiving HOPWA grant monies would tend to reveal the identities of individuals who benefit from mortgage assistance under HOPWA. We therefore conclude that the identities of such financial institutions are not made confidential under section 12905 and thus must be released. We additionally conclude, however, that all remaining information pertaining to the individual payments made by the city from HOPWA grants must be released to the requestor.

You next contend that releasing information revealing the identity of payees who received monies under the city's Youth Opportunity Grant Project ("YO!") and the amounts paid to those individuals would violate provisions of the federal Workforce Investment Act, 29 U.S.C. §§ 2801 *et seq.* You explain that the purpose of YO! is "to provide, to eligible youth seeking assistance in achieving academic and employment success, effective and comprehensive activities, which shall include a variety of options for improving educational and skill competencies and provide effective connections to employers." 29 U.S.C. § 2854. You note that in carrying out the requirements of the Workforce Investment Act, the grantees administering that program are required to comply with the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. *See* 29 U.S.C. § 2871(f)(3).

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those

records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). You have not explained, nor does this office believe, that the city is an “educational institution” for purposes of FERPA. Furthermore, you have not demonstrated that the city is acting on behalf of such an institution so as to bring the information at issue within the scope of FERPA. Accordingly, we conclude that the identities of payees who receive grant monies from the city under the Workforce Investment Act, and the amount of those monies, are not made confidential under FERPA. Accordingly, this information must be released to the requestor.

Finally, you state that the city acts as a “provider agency” in administering the Community Managed Personal Assistance Services Program (“CMPAS”), which you describe as a disability assistance program, in conjunction with the Texas Department of Human Services (“TDHS”), *see generally* 40 T.A.C. § 49.3, and contend that information revealing funds paid out in connection with that program is made confidential pursuant to section 12.003 of the Human Resources Code. Section 12.003 provides in relevant part:

(a) Except for purposes directly connected with the administration of the department’s assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information concerning, persons applying for or receiving assistance* if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a) (emphasis added); *see also id.* § 21.012(b) (requiring governmental body other than TDHS that holds client information to provide safeguards that restrict use or disclosure of information concerning applicants for or recipients of assistance programs to purposes directly connected with administration of programs); Open Records Decision Nos. 584 (1991), 166 (1977).

Sections 12.003 and 21.012 make confidential information relating to applicants for and recipients of public assistance. *See* Open Records Decision No. 584 at 3 (1991). Furthermore, this office has previously determined that except for purposes directly connected with the administration of the assistance programs administered by the TDHS, section 12.003 forbids disclosure of the broadest range of client information, that is, “any information” about clients of assistance programs of the department, not just the clients’ names and addresses. *See* Open Records Decision No. 584 (1991). Because the city is a provider agency in administering CMPAS, an assistance program administered by TDHS, the city must comply with applicable federal and state regulations and statutes. *See* 40 T.A.C. § 49.3. We therefore conclude that the register of funds paid out to clients of the

CMPAS program must be withheld in its entirety pursuant to sections 12.003 and 21.012 of the Human Resources Code.

In summary, the city must withhold from Attachment G the names of landlords and apartment complexes that receive HOPWA grant funds from the city in accordance with section 12905(e) of chapter 42 of the United States Code. The city must also withhold all of Attachment I in accordance with sections 12.003 and 21.012 of the Human Resource Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

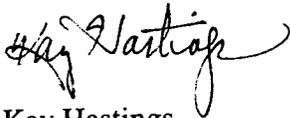
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/lmt

Ref: ID# 170530

Enc: Submitted documents

c: Mr. Brian Collister
Investigative Reporter, KMOL-TV
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(w/o enclosures)