



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 19, 2005

Mr. Robert Kline  
Assistant County Attorney  
Webb County  
P.O. Box 420268  
Laredo, Texas 78042-0268

OR2005-11416

Dear Mr. Kline:

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# 238370.

The Webb County Community Action Agency (the "agency") received a request for information regarding a named individual's application for financial assistance from the agency's "weatherization program" and any state audits involving the agency. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

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<sup>1</sup>You also raise sections 552.022 and 552.024 of the Government Code. Section 552.022 provides a list of eighteen categories of information that are expressly public and may not be withheld unless confidential under other law. See Gov't Code § 552.022. Section 552.024 provides the manner in which an employee of a governmental body may choose to keep information held by his or her employer confidential for purposes of section 552.117. See Gov't Code § 552.024. Accordingly, neither section is an exception to disclosure under the Act.

<sup>2</sup>We assume that, to the extent any additional responsive information existed on the date the agency received this request, such information has been released to the requestor. If you have not released any such information, you must do so at this time. See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances).

Section 552.102 of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). This section only applies to information in the personnel file of an employee of a governmental body. Although you raise section 552.102, you fail to explain how any of the submitted records comprise information in the personnel file of an agency employee. Therefore, we determine that section 552.102 does not apply to the submitted records.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses confidentiality provisions such as section 2306.039 of the Government Code. Section 2306.039(b) of the Government Code makes confidential “personal financial information submitted by an individual or family for a loan, grant, or other housing assistance under a program administered by the [Texas Department of Housing and Community Affairs] or the Texas State Affordable Housing Corporation or from bonds issued by the department[.]” Gov’t Code § 2306.039(b). Although you assert section 2306.039(b) of the Government Code, we note that this section applies only to records held by either the Texas Department of Housing and Community Affairs or the Texas State Affordable Housing Corporation. Thus, section 2306.039(b) does not apply to the submitted records.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

In Open Records Decision No. 373 (1983), this office determined that financial information submitted by applicants for federally-funded housing rehabilitation loans and grants was “information deemed confidential” by a common-law right of privacy. The financial information at issue in Open Records Decision No. 373 included sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history. Additionally, in Open Records Decision No. 523 (1989), we held that the credit reports, financial statements, and financial information included in loan files of individual veterans participating in the Veterans Land Program were excepted from disclosure by the common-law right of privacy. Similarly, we thus conclude that financial information relating to an applicant for housing assistance satisfies the first requirement of common-law privacy, in that it constitutes highly intimate

or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

The second requirement of the common-law privacy test requires that the information not be of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 668. While the public generally has some interest in knowing whether public funds expended for housing assistance are being given to qualified applicants, we believe that ordinarily this interest will not be sufficient to justify the invasion of the applicant's privacy that would result from disclosure of information concerning his or her financial status. *See* Open Records Decision No. 373 (although any record maintained by governmental body is arguably of legitimate public interest, if only relation of individual to governmental body is as applicant for housing rehabilitation grant, second requirement of common-law privacy test not met). In particular cases, a requestor may demonstrate a public interest that will overcome the second requirement of the common-law privacy test. However, whether there is a public interest in this information sufficient to justify its disclosure must be decided on a case-by-case basis. Open Records Decision Nos. 523, 373 at 4.

Open Records Decision Nos. 373 and 523 draw a distinction between the confidential "background financial information furnished to a public body about an individual" and "the basic facts regarding a particular financial transaction between the individual and the public body." Open Records Decision Nos. 523, 385. Subsequent decisions of this office analyze questions about the confidentiality of background financial information consistently with Open Records Decision No. 373. *See* Open Records Decision Nos. 600 (1992) (personal financial information not relating to the financial transaction between an individual and a governmental body is protected), 545 (1990) (employee's participation in deferred compensation plan private), 523 (1989), 481 (1987) (individual financial information concerning applicant for public employment is closed); *see also* Attorney General Opinions H-1070 (1977), H-15 (1973) (laws requiring financial disclosure by public officials and candidates for office do not invade their privacy rights). Accordingly, the agency must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

You state that the remaining submitted information contains Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Accordingly, the agency must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130.

Finally, we note that the remaining submitted information contains a social security number. Section 552.147 of the Government Code provides that "[t]he social security number of a

living person is excepted from” required public disclosure under the Act.<sup>3</sup> Accordingly, the agency must withhold the social security number we have marked on the submitted documents.<sup>4</sup>

In summary, the agency must withhold (1) the personal financial information we have marked under section 552.101 in conjunction with common-law privacy, (2) Texas motor vehicle record information we have marked under section 552.130, and (3) the social security number we have marked under section 552.147.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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

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<sup>3</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov’t Code § 552.147).

<sup>4</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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 Office of the Attorney General 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. 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,



Michael A. Lehmann  
Assistant Attorney General  
Open Records Division

MAL/segh

Ref: ID# 238370

Enc. Submitted documents

c: Ms. Julie Daffern  
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(w/o enclosures)