



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2006

Ms. Mary J. Ibarra
Assistant Criminal District Attorney
Bexar County District Attorney's Office
300 Dolorosa, Suite 4049-Civil Section
San Antonio, Texas 78205-3030

OR2006-09904

Dear Ms. Ibarra:

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# 257945.

The Bexar County Auditor's Office (the "county") received a request for the names of recipients of Community Development Block Grant funds and the amounts received since 2003. You state that some of the requested information is being released, but claim that some of 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 representative sample of information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. *Id.* at 683.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

In Open Records Decision No. 373 (1983) this office considered whether the statutory predecessor to section 552.101 of the Government Code required the City of Austin to withhold from public disclosure applications to a city-administered program to receive a federally funded loan or grant to rehabilitate applicants' homes. The decision explained that the application files contained information about an applicant's sources of income, employment, salary, mortgage payments, assets, medical and utility bills, social security and veterans' administration benefits, verification of employment and mortgage payments, credit history, age, ethnic origin, and family composition. ORD 373 at 1.

The decision concluded that the statutory predecessor to section 552.101, incorporating the common-law doctrine of privacy, generally excepted from required public disclosure financial information relating to an individual applicant for a housing rehabilitation grant. *Id.* at 4. However, the remainder of the requested information, including the applicant's age, ethnic origin, and family composition, was not private under the common law. *Id.*

You inform us that you have released the names of the entities that have received funds from the Community Development Block Grant, but assert that the identifying information of the individuals who received funds from these entities is confidential. After review of your arguments and the submitted information, we conclude that the income information of recipients, which we have marked, is private financial information that the county must withhold under section 552.101. However, the identifying information of grant recipients is not confidential under common-law privacy. *See* Open Records Decision No. 318 (1982) (names and addresses of individuals who occupy public housing not protected by common-law privacy). Accordingly, we conclude the county may not withhold this information under section 552.101.

We note that the remaining information contains social security numbers. 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. The county must withhold the social security numbers in the remaining information under section 552.147.²

To conclude, the county must withhold (1) the information we have marked under section 552.101 in conjunction with common-law privacy and (2) social security numbers under section 552.147. The county must release the remaining information 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

²We 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.

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 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. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 257945

Enc. Submitted documents

c: Mr. Todd Bensman
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(w/o enclosures)