



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 11, 2007

Ms. YuShan Chang
Assistant City Attorney
City of Houston - Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR2007-11886

Dear Ms. Chang:

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# 288812.

The City of Houston (the "city") received a request for a list or document containing the names of individuals who received a letter, documents referenced in a city memorandum, and all information created subsequent to an inspection of a specified apartment facility. You state that you will release portions of the responsive information. You claim that a list of e-mail addresses and portions of a call for service sheet are excepted from disclosure under sections 552.101 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the city failed to follow its procedural obligations under section 552.301 of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether

¹The requestor notes that he did not request any e-mail addresses. However, the request is for "a list or document which contains [] names[.]" Upon review of the submitted documents, we find that the submitted e-mail address list does contain names of individuals, and thus, is responsive to the request.

a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). Here, the city received the request for information on June 20, 2007. The city's first request for a ruling is postmarked July 3, 2007. The city then sent an amended brief postmarked July 5, 2007 further clarifying its claimed exceptions and noting the city observed July 4, 2007 as a city holiday. Thus, the tenth business day from receipt of the request was July 5, 2007. As the city's original and amended briefs were postmarked by July 5, 2007, we conclude that the city was timely in its request for a ruling and did not violate the procedural requirements of section 552.301. *See* Gov't § 552.308 (a document is timely if it is sent via first class United States mail and bears a post office cancellation mark indicating a time within the procedural requirements of section 552.301).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes. The city argues that federal law requires it to keep confidential information that relates to recipients of Housing Opportunities for Persons with AIDS ("HOPWA") grant money. 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.*" *Id.* § 12905(e) (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

We understand that the recipient of the HOPWA grants at issue is an apartment complex. We take from this representation that the recipient is not actually an individual suffering from AIDS; rather, the recipient of the grant monies provides housing assistance to persons with AIDS and their families. The question we must address is whether the identity and address of an apartment complex or residence receiving HOPWA grant monies from the city constitutes "information regarding individuals receiving such assistance."

²*See 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 Urban Affairs Comm., 100th Cong. p. 154 (1988). 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).*

After review of the legislative background of HOPWA, and based on representations made by the United States Department of Housing and Urban Development (“HUD”), we find that, generally, releasing the identities and addresses of apartment complexes and residences receiving HOPWA grants could in some instances reveal the identities of individuals with AIDS. However, the submitted records reflect that a notice was published in the Houston Chronicle on October 22, 2006 announcing a public hearing to discuss the awarding of funds to the AIDS Foundation of Houston by the Housing and Community Development Department for the reconstruction of the named apartment complex. Further, the records reflect that the public hearing was held on December 4, 2006 and a sum of money was approved for the reconstruction of the apartment complex. Based on the foregoing, it is apparent that the name and address of this apartment complex is well known to the general public as a facility the purpose of which is to house individuals with HIV and AIDS. You have not provided any additional arguments explaining how, in this instance, withholding the name and address of the apartment complex would protect the identities of its residents. Thus, here you have failed to establish how withholding the name and address of the complex identified in the submitted records would effectuate the purpose of the statute. Accordingly, in this instance, the city may not withhold the name and address of the identified apartment complex pursuant to section 12905(e) of chapter 42 of the United States Code.

However, we note that based on your markings the name and address of another facility receiving HOPWA funds is contained in the call for service sheet. The submitted records do not reflect this apartment as previously identified to the public. Therefore, to the extent that this information pertains to a facility receiving HOPWA funds, the city must withhold the information we have marked in Exhibit 3 pursuant to section 12905(e).

Next, we turn to your argument that the list of e-mail addresses contained in Exhibit 2 is excepted from disclosure under section 552.137 of the Government Code.³ 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). The list contains both private and governmental e-mail addresses. This office has stated that e-mail addresses of governmental bodies may not be withheld under section 552.137. You do not inform us that the owners of the private e-mail addresses have affirmatively consented to release of their e-mail addresses; therefore, the e-mail addresses we have marked must be withheld under section 552.137. However, the remaining e-mail addresses must be released.

³We note that the requestor states, “[t]he law does not require that the [c]ity get permission to withhold information that is made confidential by statute, which email addresses are [sic].” However, the city has not received a previous determination from this office to withhold e-mail addresses under section 552.137 of the Government Code. Thus, the city acted properly in requesting a ruling from this office to withhold the e-mail addresses it considers subject to an exception to the Act. *See* 552.301(a) Gov’t Code.

In summary, to the extent the name and address we have marked in Exhibit 3 pertains to a facility receiving HOPWA funds, the city must withhold this information in accordance with section 12905(e) of chapter 42 of the United States Code. The e-mail addresses we have marked in Exhibit 2 must be withheld under section 552.137 of the Government Code. The remaining information must be released.

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 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,

A handwritten signature in black ink, appearing to read "M. Alan Akin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

M. Alan Akin
Assistant Attorney General
Open Records Division

MAA/mcf

Ref: ID# 288812

Enc. Submitted documents

c: Mr. William Stolz
P.O. Box 130303
Houston, Texas 77219-0303
(w/o enclosures)