



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2007

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston
P.O. Box 562
Houston, Texas 77251-1562

OR2007-14768

Dear Mr. Gambrell:

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# 294244.

The City of Houston (the "city") received a request for thirty-eight categories of information regarding the city's Department of Housing and Community Development, Short Term Rent, Mortgage, and Utility Assistance grants awarded, Tenant Based Rental Assistance grants awarded, and information relating to Bering Omega Community Services ("Bering").¹ You state that portions of the requested information will be made available to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code.² The city additionally asserts that

¹We note that the requestor specifically excludes the following information from the request: "an individual's HIV status, certain e-mail addresses, addresses of apartment complexes receiving HOPWA assistance, the identity of persons who have HIV/AIDS, social security numbers, and vehicle registration numbers, and the like." Thus, this information, which we have marked, is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release that information in response to this request.

²Although you also originally raise sections 552.103, 552.104, 552.107, 552.110, 552.111, 552.113, 552.116, 552.131, 552.133, 552.136, and 552.147 of the Government Code, you have provided no arguments explaining how these exceptions are applicable to the submitted information. Therefore, we presume you no

some of the submitted information may be subject to the proprietary interests of Bering, and it has notified Bering of the request for information and its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). Bering claims that portions of the submitted information are excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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 "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); *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.³

The city and Bering state that the responsive information identifies specific individuals who receive HOPWA funding. The responsive information at issue consists of identification numbers, names of apartment and residential complexes, and the names and addresses of mortgage lenders, utility companies, and businesses that receive HOPWA grants. We understand that these recipients are not individuals suffering from AIDS; rather, these recipients of the grant monies provide housing, utilities, and other assistance to persons with

longer assert these exceptions to disclosure. *See* Gov't Code §§ 552.301, 302.

³*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 Urban Affairs Comm.*, 100th Cong. p. 154 (1988).

AIDS and their families. The question we must address is whether the identification numbers, names of apartment and residential complexes, and the names and addresses of mortgage lenders, utility companies, and businesses receiving HOPWA grant monies from the city reveals the name of any individual with AIDS who receives assistance.

Our office has been provided with a letter written in September 2005 by Ms. Katie S. Worsham, Director with the U.S. Department of Housing and Urban Development (“HUD”). HUD states that the “publication of an address receiving HOPWA assistance does not breach the confidentiality provision of 24 CFR 574.440 because that section only obligates HUD and grantees to keep names of clients confidential.” The identification numbers, identities of apartment and residential complexes, and names and addresses of mortgage lenders, utility companies, and businesses at issue here do not identify the name of an actual client with AIDS who receives assistance. Accordingly, based on HUD’s representation and our review of the responsive information, we find that the identification numbers, the names of apartment and residential complexes, and the names and addresses of mortgage lenders, utility companies, and businesses receiving HOPWA grants are not confidential under section 12905 of chapter 42 of the United States Code. Thus, none of the responsive information may be withheld on this basis.

Section 552.101 also encompasses common-law privacy, which 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). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we have marked personal financial information in Bering’s records that must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. However, the city and Bering failed to demonstrate that the remaining responsive information is protected by common-law privacy. Thus, none of the remaining responsive information may be withheld on this basis.

Bering asserts that some of the remaining responsive information is subject to section 552.136 of the Government Code. Section 552.136 states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136 (b). Accordingly, the city must withhold the account numbers we have marked under section 552.136 of the Government Code.

Finally, we note that some of the submitted materials may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception

applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the city must withhold the information we have marked under sections 552.101 and 552.136 of the Government Code. The remaining submitted information must be released, but any copyrighted information may only be released in accordance with copyright law.⁴

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).

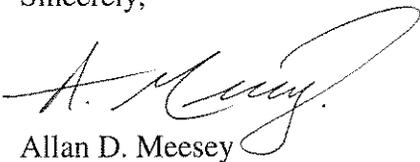
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

⁴As our ruling on the responsive information is dispositive, we need not address the remaining arguments.

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,



Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 294244

Enc. Submitted documents

c: Concerned Citizens for Fiscal Responsibility
P.O. Box 130303
Houston, Texas 77219-0303
(w/o enclosures)

Mr. Dan Snare
Executive Director
Bering Omega Community Services
1427 Hawthorne
Houston, Texas 77006
(w/o enclosures)