



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2009

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2009-07602

Dear Ms. Alexander:

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# 344792.

The Texas Department of Transportation (the "department") received a request for information pertaining to supplemental payments made to a named individual regarding a specified address. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.105 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(3) of the Government Code provides for the disclosure of "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). Section 552.105 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.*

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.

§ 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 564 (1990) (statutory predecessor to section 552.105 subject to waiver). Because this section is not other law that makes information confidential for the purposes of section 552.022, the department may not withhold the information subject to section 552.022(a)(3) under section 552.105. However, because information subject to section 552.022 may be withheld under section 552.101, we will consider the applicability of this exception to the documents that are subject to section 552.022, as well as the remaining information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. In addition, a federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101 of the Act. *See* Open Records Decision No. 599 at 4 (1992). You raise section 552.101 in conjunction with part 24 of title 49 of the Code of Federal Regulations, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and pertains to relocation assistance and real property acquisition for federal and federally-assisted programs. Section 24.9 of title 49 of the Code of Federal Regulations states, in part:

(a) Records. The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding Agency, whichever is later.

(b) Confidentiality of records. Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

49 C.F.R. § 24.9(a)-(b). You assert the department is an “agency” as understood by this section. “Agency” means a federal agency, state, state agency, or a person that acquires real property or displaces a person from property. *See id.* § 24.2(a)(1). You state the department is required “to maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance” with part 24. You also state the requested documents are maintained by the department in accordance with part 24 of title 49 of the Code of Federal Regulations. Based upon your representations, we agree the submitted

information is confidential under section 24.9(b) of title 49 of the Code of Federal Regulations and must be withheld under section 552.101 of the Government Code.²

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 344792

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.