



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2009

Mr. David M. Feldman
Feldman, Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road Suite 1200
Houston, Texas 77057

OR2009-17904

Dear Mr. Feldman:

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# 364668.

The Houston Housing Authority (the "housing authority") received a request for an electronic copy of any databases of recipients in the Housing Choice Voucher program (the "program") for a specified time period. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You assert the submitted information is confidential in its entirety under section 552a of title 5 of the United States Code, also known as the federal Privacy Act, because the housing authority administers the program on behalf of the U.S. Department of Housing and Urban Development ("HUD") and the program is subject to HUD regulations. Section 552a provides in part that "[n]o agency shall

¹We note you have redacted social security numbers from the submitted information. 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.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains[.]” 5 U.S.C. § 552a(b). We note, however, that, for purposes of section 552a, “agency” means an agency, department, corporation, or other instrumentality of the federal government. *See id.* §§ 552a(1), 552(f)(1)(formerly section 552(e)); *see also St. Michael’s Convalescent Hosp. v. State of California*, 643 F.2d 1369, 1373 (9th Cir. 1981) (definition of agency under Privacy Act does not encompass state agencies or bodies); *Shields v. Shetler*, 682 F.Supp. 1172, 1176 (D. Colo. 1988) (Privacy Act does not apply to state agencies or bodies). Furthermore, neither the receipt of federal funds nor federal regulation convert state or local governmental bodies into agencies covered by the Act. *See St. Michael’s Convalescent Hosp.*, 643 F. 2d at 1373-1374. Because the housing authority is not a federal agency, it may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 552a of title 5 of the United States Code.

Section 552.101 of the Government Code also encompasses confidentiality provisions such as section 2306.039 of the Government Code. Section 2306.039 of the Government Code provides in pertinent part:

(a) Except as provided by Subsections (b) and (c), the [Texas Department of Housing and Community Affairs (the “department”)] and the Texas State Affordable Housing Corporation [(the “corporation”)] are subject to Chapters 551 and 552.

(b) Chapters 551 and 552 do not apply to the personal or business financial information, including social security numbers, taxpayer identification numbers, or bank account numbers, submitted by a housing sponsor or an individual or family to receive a loan, grant, or other housing assistance under a program administered by the department or the [corporation] or from bonds issued by the department, except that the department and the corporation are permitted to disclose information about any applicant in a form that does not reveal the identity of the sponsor, individual, or family for purposes of determining eligibility for programs and in preparing reports required under this chapter.

Gov’t Code § 2306.039(a), (b). You assert the personal financial information submitted by the participants in the program is confidential under section 2306.039(b). However, section 2306.039 applies only to records held by either the department or the corporation. Thus, section 2306.039(b) does not apply to the submitted information.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. You assert the voucher recipients’ gross annual incomes and disability statuses are excepted from disclosure under 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).

In Open Records Decision No. 373 (1983), this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. In that decision, this office concluded:

all financial information relating to an individual – including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history – ordinarily 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.

Id. at 3. You explain the voucher recipients' gross annual incomes were submitted to the housing authority by applicants for housing assistance. Accordingly, we determine this information is highly intimate or embarrassing. However, we still must determine whether the second requirement for common-law privacy is met in this instance. As this office stated in Open Records Decision No. 373, although any record maintained by a governmental body is arguably of legitimate public interest, if the only relation of an individual to a governmental body is as an applicant for a housing rehabilitation grant, the second requirement of the common-law privacy test is not met. *See id.* at 3-4. Accordingly, based on your arguments and our review, we find the voucher recipients' gross annual incomes are not of legitimate public interest. Additionally, this office has determined certain kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Based on your arguments and our review of the information at issue, we determine the voucher recipients' disability statuses, which we have marked, are highly intimate or embarrassing and not of legitimate public interest. Accordingly, the housing authority must withhold the voucher recipients' gross annual incomes and disability statuses under section 552.101 in conjunction with common-law privacy. The remaining information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 364668

Enc. Submitted documents

c: Requestor
(w/o enclosures)