



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2011

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2011-16983

Dear Mr. Hager:

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# 436271 (File Ref.# 51220).

The City of Lancaster (the “city”), which you represent, received a request for the names, addresses, and telephone numbers of members of the senior life center and for information regarding rental fees for the center. You state the city will release information regarding rental fees. You further state the city has no information responsive to the portion of the request for member addresses.¹ You claim the requested names and telephone numbers are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 that is protected from disclosure

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism’d); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

by other statutes and regulations.² A federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision Nos. 599 (1990), 373 (1983). Section 1321.51 of title 45 of the Code of Federal Procedure provides that:

(a) A State agency shall have procedures to protect the confidentiality of information about older persons collected in the conduct of its responsibilities. The procedures shall ensure that no information about an older person, or obtained from an older person by a service provider or the State or area agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State or local monitoring agencies.

45 C.F.R. § 1321.51(a). This provision is incorporated into section 85.201(h)(1) of title 40 of the Texas Administrative Code, which states as follows:

(h) Confidentiality.

(1) [An area agency on aging] must comply with all applicable state and federal laws, rules, and regulations related to the confidentiality of program participant information, including 45 CFR §1321.51 and §85.401(k) of this chapter.

40 T.A.C. § 85.201(h)(1); *see id.* § 85.201(a)(2) (stating section applies to service provided under Older Americans Act (the “OAA”), 42 U.S.C. § 3001, to program participant funded in whole or in part by Texas Department of Aging and Disability Services (“DADS”)); *see also id.* § 85.2(1) (defining “area agency on aging”). In addition, the regulations also state that an area agency on aging “must ensure that a service provider complies with the requirements in subsections (f)-(p) of section 85.201.” 40 T.A.C. § 85.201(q).

You inform us that the Senior Service Center (the “center”) is a “provider” of services. We understand these services are provided by the center under the OAA and are funded in whole or in part by DADS. *See* 40 T.A.C. § 85.309(b) (defining “senior center” for purposes of OAA). Furthermore, you do not inform us that any person has consented to the disclosure of the requested information.³ We therefore agree that the city must withhold the requested

²The city raises section 552.101 in conjunction with section 270.1(d) of title 40 of the Texas Administrative Code. We note that title 40 contains no such section.

³We note the responsive information contains the requestor’s name and telephone number. Thus, the requestor may have a right of access to that information, provided the city receives the proper consent.

information under section 552.101 of the Government Code in conjunction with section 1351(a) of title 45 of the Code of Federal Regulations. Access to this information can only be provided with the informed consent of the person or of his or her legal representative, or if required by court order or program monitoring. The remaining submitted information is not responsive to the request, and the city need not release it.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 436271

Enc. Submitted documents

c: Requestor
(w/o enclosures)