



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 30, 2011

Ms. Josette Flores
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2011-17613

Dear Ms. Flores:

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# 438640.

The City of El Paso (the "city") received a request for information concerning the participation of the requestor's child in the Special Supplemental Nutrition Program for Women, Infants and Children ("WIC"). You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that other statutes make confidential. Section 552.101 has been found by this office to encompass information made confidential by federal regulations. *See Rainbow Group, Ltd. v. Tex. Employment Comm'n*, 897 S.W.2d 946 (Tex. App.—Austin 1995, writ denied) (court approves office of attorney general finding to withhold, under section 552.101, unemployment compensation identification numbers as made confidential by federal regulations); *see also* Open Records Decision Nos. 599 (1990), 373 (1983). You claim that the information you have marked is confidential pursuant to section 246.26(d) of title 7 of the Code of Federal Regulations. Section 246.26(d)(1) of this title provides:

(i) Confidential applicant and participant information is any information about an applicant or participant, whether it is obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation, that individually identifies an applicant or participant and/or family member(s). Applicant or participant information is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other Federal, State or local law.

(ii) Except as otherwise permitted by this section, the State agency must restrict the use and disclosure of confidential applicant and participant information to persons directly connected with the administration or enforcement of the WIC Program whom the State agency determine have a need to know the information for WIC Program purposes. These persons may include, but are not limited to: personnel from its local agencies and other WIC State or local agencies; persons under contract with the State agency to perform research regarding the WIC Program, and persons investigating or prosecuting WIC Program violations under Federal, State, or local law.

7 C.F.R. § 246.26(d)(1). You state the submitted information consists of identifying WIC applicant and participant information. You assert this information is protected by section 246.26(d)(1). Upon review, we agree the submitted information consists of applicant and participant information that is generally confidential under section 246.26(d)(1). However, in this instance, the requestor is a parent of the participant. Section 246.26(d)(5) of title 7 of the Code of Federal Regulations provides:

Access to information by applicants and participants. The State or local agency must provide applicants and participants access to all information they have provided to the WIC Program. In the case of an applicant or participant who is an infant or child, the access may be provided to the parent or guardian of the infant or child, assuming that any issues regarding custody or guardianship have been settled. However, the State or local agency need not provide the applicant or participant (or the parent or guardian of an infant or child) access to any other information in the file or record such as documentation of income provided by third parties and staff assessments of the participant's condition or behavior, unless required by Federal, State, or local law or policy or unless the information supports a State or local agency decision being appealed pursuant to § 246.9.

Id. § 246.26(d)(5). Thus, a parent generally has a right of access to the otherwise confidential information of a child participant, if custody issues have been settled. However, you state the city has been informed by its Department of Public Health that there is a

pending custody dispute regarding the child at issue. Therefore, custody issues have not been settled as required for release of information under section 246.26(d)(5). Accordingly, the submitted information is confidential under section 246.26(d)(1) of title 7 of the Code of Federal Regulations and must be withheld under section 552.101 of the Government Code.

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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/agn

Ref: ID # 438640

Enc. Submitted documents

c: Requestor
(w/o enclosures)