



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2011

Mr. Jeffrey T. Pender
Deputy General Counsel
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

OR2011-19230

Dear Mr. Pender:

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# 440660.

The Texas Department of Housing and Community Affairs (the "department") received a request for the physical address of certain units that were inspected during a specified period of time. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it does not consist of the physical addresses of the specified units. The department need not release non-responsive information in response to this request, and this ruling will not address that 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. This section encompasses information made confidential by other law, such

as section 600.153(f) of title 10 of the Code of Federal Regulations.¹ This section provides in relevant part:

(f) Unless required by statute, [the Department of Energy (the “DOE”)] shall place no restrictions on recipients [of grants] that limit public access to the records of recipients that are pertinent to an award, except when DOE can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to DOE.

10 C.F.R. § 600.153(f); *see also id.* § 600.101 (defining a “[r]ecipient” as an “organization receiving financial assistance directly from DOE to carry out a project or program”). Section 600.153 is located in subpart B of part 600 of title 10. Section 600.100 sets forth the “Purpose” of subpart B, providing “[subpart B] establishes rules governing subawards to institutions of higher education, hospitals, and non-profit organizations (including grants and cooperative agreements administered by State, local and Indian Tribal governments).” *Id.* § 600.100. You inform us the department receives funding for the Weatherization Assistance Program (the “WAP”) from the DOE.

The DOE has issued “Weatherization Program Notice 10-08” to provide guidance regarding privacy issues related to the WAP.² *See* U.S. Dep’t of Energy, Weatherization Program Notice 10-08, Weatherization Guidance on Maintaining the Privacy of Recipients of Services (Feb. 1, 2010); *see also* 42 U.S.C. § 6863. According to the DOE, “[t]his guidance is provided to States or other entities named in the Notification of Grant Award as the recipients of financial assistance under the WAP[.]” *See* U.S. Dep’t of Energy, Weatherization Program Notice 10-08, Weatherization Guidance on Maintaining the Privacy of Recipients of Services (Feb. 1, 2010). The DOE states it derives legal authority to issue such guidance pursuant to Title IV, Energy Conservation and Production Act, which authorizes the DOE to administer the WAP. *See* Pub. L. No. 94-385, 90 Stat. 1125 (1976). The DOE quotes section 600.153(f) and states the DOE would be legally required to keep confidential “any specifically identifying information related to an individual’s eligibility application for WAP, or the individual’s participation in WAP, such as name, address, or income information.”³ *See* U.S. Dep’t of Energy, Weatherization Program Notice 10-08, Weatherization Guidance on Maintaining the Privacy of Recipients of Services

¹ We note that an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 476 (1987) (addressing statutory predecessor).

²This notice is available on the DOE’s website at: http://www1.eere.energy.gov/wip/pdfs/wpn_10-08_privacy.pdf.

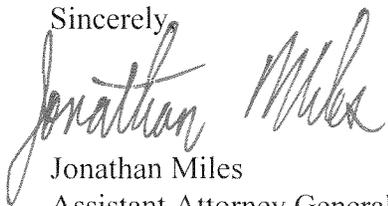
³*See* 5 U.S.C. § 552(b)(6) (excepting certain personal information from public disclosure under the Freedom of Information Act).

(Feb. 1, 2010). Thus, the DOE concludes “states and local service providers should extend that same protection to their client’s records for WAP.” *Id.* The department asserts the requested information, which identifies individuals participating in the WAP, is confidential under section 600.153(f). Based on the department’s representations and our review, we find the department must withhold the requested information under section 552.101 in conjunction with section 600.153(f) of title 10 of the Code of Federal Regulations.

You ask this office to issue a previous determination that would permit the department to withhold the personally identifying information of individuals participating in the department’s Weatherization Assistance Program under section 552.101 of the Government Code in conjunction with section 600.153(f) of title 10 of the Code of Federal Regulations without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We decline to issue such a decision at this time. Accordingly, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/agn

Ref: ID# 440660

Enc. Submitted documents

c: Requestor
(w/o enclosures)