



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 30, 2012

Mr. Eddy Treviño  
City Attorney  
City of Donna  
3907 South Sugar Road  
Edinburg, Texas 78539

OR2012-01466

Dear Mr. Treviño:

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# 443867.

The Housing Authority of the City of Donna (the “authority”), which you represent, received a request for all contracts entered into by the authority since January 2009.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under sections 552.117 and 552.132 of the Government Code. We also understand you to claim section 552.101 of the Government Code as an exception to disclosure.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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<sup>1</sup>You state the city sought and received clarification from the requestor regarding the request. *See* Gov’t Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

<sup>2</sup>Although you raise section 552.024 of the Government Code as an exception to disclosure, this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain personal information relating to the official or employee that is held by the employing governmental body. *See* Gov’t Code § 552.024. We note section 552.117 is the proper exception to assert.

<sup>3</sup>We 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.

We must address the authority's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request for information (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e).

We understand the authority received the request for information on November 4, 2011. Thus, the authority's deadlines under section 552.301 were November 21, 2011, and November 30, 2011. The authority requested this decision by facsimile and by United States mail on November 22, 2011, and submitted the responsive documents on January 19, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, the authority did not comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by law or affects third party interests. *See* ORD 630. Your claims under sections 552.101, 552.117, and 552.132 of the Government Code can provide compelling reasons for non-disclosure; therefore, we will address your claims.

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 other statutes make confidential. You assert some of the requested information is protected by the Privacy Act of 1974, section 552a of title 5 of the United States Code ("Federal Privacy Act"). We note that the Federal Privacy Act applies only to a federal agency. *See* 5 U.S.C. 552(f), 552a (a). State and local government agencies are not covered by the Federal Privacy Act. *See Davidson v. Georgia*, 622 F. 2d 895, 896 (5th Cir. 1980); *see also* Attorney General Opinion MW-95

(1979). Because the authority is not a federal agency, it is not bound by the Federal Privacy Act's confidentiality provisions as would be a federal agency. *See* 5 U.S.C. §§ 552a(a)(1), 552(f) (defining "agency" for purposes of Privacy Act). Therefore, the requested information cannot be considered confidential by law pursuant to section 552.101 of the Government Code in conjunction with the Federal Privacy Act.

You claim that a portion of the requested information is confidential under the Violence Against Women Act ("VAWA"), which is codified under section 13925 through section 14045d of title 42 of the United States Code. Section 13925(b)(2) provides, in part:

(2) Nondisclosure of confidential or private information

(A) In general

In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families, grantees and subgrantees under this title shall protect the confidentiality and privacy of persons receiving services.

(B) Nondisclosure

Subject to subparagraphs (C) and (D), grantees and subgrantees shall not—

(i) disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs; or

(ii) reveal individual client information without the informed, written, reasonably time-limited consent of the person . . . about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, person with disabilities, or the abuser of the other parent of the minor.

42 U.S.C. § 13925(b)(2)(A), (B). Section 13925(a)(18) states:

(18) Personally identifying or personal information

The term “personally identifying information” or “personal information” means individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including—

(A) a first and last name;

(B) home or other physical address;

(C) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);

(D) a social security number; and

(E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any of subparagraphs (A) through (D), would serve to identify any individual.

*See id.* § 13925(a)(18). You do not inform us whether the authority receives grants under VAWA to provide housing assistance to families who are the victims of domestic violence nor whether any of the responsive information pertains to families the authority serves with the aid of such grants. *See id.* § 13925; *see also* 42 U.S.C. § 14043e-4(b) (authorizing grants to promote access to and use of public and assisted housing by victims of domestic violence, dating violence, sexual assault, and stalking). Thus, we find you have failed to demonstrate that any of the requested information includes the personally identifying information of individuals collected in connection with the authority’s rendition of housing assistance funded by VAWA. Therefore, we conclude none of the requested information is confidential under section 13925(b)(2) of title 42 of the United States Code and the authority may not withhold any information pursuant to section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses section 1304(b) of title 8 of the United States Code, which addresses the confidentiality of records of the registration of aliens under section 1301 of the United States Code. Section 1304(b) provides:

(b) Confidential Nature

All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only

(1) pursuant to section 1357(f)(2) of this title, and

(2) to such persons or agencies as may be designated by the Attorney General.

8 U.S.C. § 1304(b). Thus, alien registration information is confidential under section 1304(b) of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code on that basis.

Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the authority may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You have not identified any current or former officials or employees of the authority as tenants. Thus, you have failed to demonstrate that any of the requested information is subject to section 552.117(a)(1), and the authority may not withhold any of the information at issue on that basis.

Next, you assert some of the remaining information is excepted from disclosure under section 552.132 of the Government Code, which provides in relevant part:

(b) The following information held by the crime victim's compensation division of the attorney general's office is confidential:

(1) the name, social security number, address, or telephone number of a crime victim or claimant; or

(2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

...

(d) An employee of a governmental body who is also a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, regardless of whether the employee has filed an application for compensation under that subchapter, may elect whether to allow public access to information held by the attorney general's office or other governmental body that would identify or tend to identify the victim, including a photograph or other visual representation of the victim. An election under this subsection must be made in writing on a form developed by the governmental body,

be signed by the employee, and be filed with the governmental body before the third anniversary of the latest to occur of one of the following:

- (1) the date the crime was committed;
- (2) the date employment begins; or
- (3) the date the governmental body develops the form and provides it to employees.

*Id.* § 552.132(b), (d). The remaining information is not held by the crime victim's compensation division of this office; therefore, section 552.132(b) is not applicable to this information. Moreover, there is no indication the remaining information involves a crime victim who is an employee of a governmental body, so as to be subject to section 552.132(d). We therefore conclude the authority may not withhold any portion of the remaining information under section 552.132 of the Government Code.

We note section 552.101 of the Government Code also excepts from disclosure information that is protected by common-law privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82.

The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found some 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). We note that an individual's name or date of birth is not ordinarily private information subject to section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010); Open Records Decision Nos. 554 (1990), 448 (1986).

In Open Records Decision No. 318 (1982), this office concluded that the names and present addresses of former residents of a public housing development were not protected from disclosure under the common-law right to privacy. *See* ORD 318. This office has also found that information contained in a housing grant application regarding an applicant's family composition, employment, age, and ethnic origin is not information that is ordinarily

protected from disclosure under the common-law right to privacy. *See* Open Records Decision No. 373 (1983). Likewise, the amounts paid by a housing authority on behalf of eligible tenants are not protected from disclosure under privacy interests. *See* Open Records Decision No. 268 (1981); *see also* Open Records Decision Nos. 600 at 9-10 (1992), 545 (1990), 489 (1987), 480 (1987). On the other hand, this office has found that personal financial information regarding public housing tenants is excepted from disclosure pursuant to section 552.101 of the Government Code. *See* Open Records Decision No. 373 (1983).

In Open Records Decision No. 373, 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.

ORD 373 at 3. Whether the public has a legitimate interest in an individual's sources of income must be determined on a case-by-case basis. *See id.* at 4; *see also* ORD 600; 545. Based on our review of the remaining information you seek to withhold, we find that portions of this information constitute personal financial information that is protected from disclosure under the common-law right to privacy. Accordingly, we conclude that the authority must withhold the types of information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

In summary, alien registration information is confidential under section 1304(b) of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code. The authority must withhold the types of information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The remaining requested information must be released to the requestor.<sup>4</sup>

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.

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<sup>4</sup>We note 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.

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](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# 443867

Enc. Submitted documents

c: Requestor  
(w/o enclosures)