



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 29, 2012

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-2977

OR2012-03103

Dear Mr. Bounds:

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# 448450 (City File No. 20).

The City of Corpus Christi (the "city") received a request for the telephone numbers and addresses of three named members of the Lindale Senior Center. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, we note, and you acknowledge, portions of the information you have submitted are not responsive to the instant request, which seeks only addresses and telephone numbers. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request.

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 by other statutes and regulations. 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 services 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* 40 T.A.C. § 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.” *See* 40 T.A.C. § 85.201(q).

You state the Lindale Senior Center (the “center”) is a “provider” of services under the OAA and that such services are funded in whole or in part by DADS. *See id.* § 85.309(b) (defining “senior center” for purposes of OAA). You inform us none of the individuals at issue have consented to the disclosure of the requested information, nor is disclosure required in this instance by court order or for program monitoring. *See* 45 C.F.R. § 1321.51(a). We therefore agree the city must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 1351(a) of title 45 of the Code of Federal Regulations.

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,

A handwritten signature in cursive script that reads "Misty Haberer Barham".

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eb

Ref: ID # 448450

Enc. Submitted documents

c: Requestor
(w/o enclosures)