



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2012

Ms. Cara Leahy White
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2012-08746A

Dear Ms. White:

This office issued Open Records Letter No. 2012-08746 (2012) on June 7, 2012. We have examined this ruling and determined that Open Records Letter No. 2012-08746 is incorrect. When this office determines that an error was made in the decision process under sections 552.301 and 552.306 of the Government Code, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on June 7, 2012. *See generally* Gov't Code 552.011 (providing Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code).

You ask whether certain information is subject to required public disclosure under the Act. Your request was assigned ID# 462695.

The Grandview Housing Authority (the "authority"), which you represent, received a request for thirteen categories of information related to the authority's operations, fair housing, and persons with disabilities. You state the authority will redact a driver's license and personal identification document pursuant to section 552.130(c) of the Government Code, social security numbers pursuant to section 552.147(b) of the Government Code, and personal e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You also state some responsive

¹Section 552.130(c) allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. 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. *See id.* § 552.147(b).

information will be released to the requestor. You claim the submitted 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.

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 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 type 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).

In Open Records Decision No. 318 (1982), this office concluded 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 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 personal financial information regarding public housing tenants is excepted from disclosure pursuant to section 552.101 of the Government Code. *See* ORD 373.

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 submitted information, we find that portions of these records constitute information that is protected from disclosure under the common-law right to privacy. Accordingly, we conclude the authority must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The remaining information is not private and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information other statutes make confidential. You assert the remaining information is protected by the Privacy Act of 1974, section 552a of title 5 of the United States Code (the "Privacy Act"). As you acknowledge, the 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 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 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 submitted information cannot be considered confidential by law pursuant to section 552.101 of the Government Code in conjunction with the Privacy Act.

You also seek to withhold the remaining information pursuant to subsections 1437d(q) and 1437d(t) of title 42 of the United States Code. *See* 42 U.S.C. § 1437d(q), (t). These two subsections are found in chapter eight of title 42 of the United States Code, a chapter that concerns low-income housing. The federal government provides housing assistance to eligible families, including low-income families and families with elderly and disabled individuals, through the chapter 8 housing program. *See id.* § 1437(a). Subsection 1437a(b)(6)(A) defines a "public housing agency" as "any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of public housing." *Id.* § 1437a(b)(6)(A). You explain the authority is a public housing agency created under chapter 392 of the Local Government Code. *See* Loc. Gov't Code §§ 392.001-392.104. You state the authority receives federal assistance to provide public housing for qualified applicants. Based upon these representations, we determine the authority is a public housing agency for purposes of section 1437.

Subsection 1437d(q) relates to the availability of criminal conviction records of adult applicants for, or tenants of, public housing received by a public housing agency from the National Crime Information Center, police departments, and other law enforcement agencies for purposes of applicant screening, lease enforcement, and eviction. 42 U.S.C. § 1437d(q). Subsections 1437d(q)(4) and 1437d(q)(5) provide in pertinent part as follows:

(q) Availability of records

...

(4) Records management

Each public housing agency shall establish and implement a system of records management that ensures that any criminal record received by the public housing agency is—

(A) maintained confidentially[.]

...

(5) Confidentiality

A public housing agency receiving information under this subsection may use such information only for the purposes provided in this subsection and such information may not be disclosed to any person who is not an officer, employee, or authorized representative of the agency and who has a job-related need to have access to the information in connection with admission of applicants, eviction of tenants, or termination of assistance. . . .

Id. § 1437d(q)(4), (5); *see id.* § 1437d(q)(6) (providing penalty for knowingly and willfully obtaining information subject to subsection 1437d(q) under false pretenses or knowingly and willfully disclosing such information in an unlawful manner). Thus, under subsections 1437d(q)(4) and (5), a public housing agency must establish a records management system that ensures the confidentiality of criminal conviction records of adult applicants for, or tenants of, public housing received by a public housing agency and may use or disclose such criminal conviction records only as provided in subsection 1437d(q). You have not established the records at issue consist of criminal conviction records of adult applicants for, or tenants of, public housing received by a public housing agency. Thus, we conclude subsections 1437d(q)(4) and 1437d(q)(5) do not apply to the information at issue.

Subsection 1437d(t) authorizes a public housing agency to obtain information from a drug abuse treatment facility that is related to an applicant's current illegal use of a controlled substance. *Id.* § 1437d(t)(1). Subsection 1437d(t)(2) provides in pertinent part as follows:

(t) Obtaining information from drug abuse treatment facilities

...

(2) Confidentiality of applicant's records

...

(B) Records management

Each public housing agency that receives information under this subsection from a drug abuse treatment facility shall establish and implement a system of records management that ensures that any information received by the public housing agency under this subsection—

(i) is maintained confidentially in accordance with section 543 of the Public Health Service Act [42 U.S.C. 290dd-2][.]

Id. § 1437d(t)(2)(B)(i). Thus, subsection 1437d(t)(2) requires a public housing agency to establish a records management system that ensures the confidentiality of records received from a drug abuse treatment facility that are related to an applicant's current illegal use of a controlled substance. *Id.* You have not established the records at issue consist of records received from a drug abuse treatment facility that are related to an applicant's current illegal use of a controlled substance. Thus, subsection 1437d(t)(2) does not apply to the information at issue. Accordingly, the authority may not withhold any of the remaining information under section 552.101 of the Government Code based on section 1437d.

Next, you raise subsection 3544(c)(2)(A) of title 42, which provides for the confidentiality of certain records held by, among others, "representatives of public housing agencies."² *Id.* § 3544(c)(2)(A); *see also id.* § 3544(a)(3) (defining "public housing agency" for purposes of section 3544 as "any agency described in section 3(b)(6) of the United States Housing Act of 1937," 42 U.S.C. § 1437a(b)(4)). Subsection 3544(c)(2)(A) provides that the following categories of information concerning applicants for, and recipients of, benefits under programs of the Department of Housing and Urban Development, may be used only for the purpose of verifying an applicant's or participant's eligibility for or level of benefits: 1) unemployment compensation income, 2) additional sources of earned income, and 3) federal income tax return information. 42 U.S.C. § 3544(c)(2)(A). Subsection 3544(c)(3)(A) provides criminal penalties for any person, including an officer or employee of any public housing agency, who knowingly and willfully discloses any such information to an individual not entitled to receive it. *Id.* § 3544(c)(3)(A). After review of the remaining information at issue, we find you have not established the information consists of unemployment compensation income, additional sources of earned income, or federal income tax return information. Thus, we find you have not established section 3544 makes

²Although you refer to the McKinney-Vento Homeless Assistance Act (the "MVHAA"), chapter 119 of title 42 of the United States Code, you do not assert a provision of the MVHAA makes confidential the information at issue.

confidential the remaining information, and the authority may not withhold any of the information at issue under section 552.101 of the Government Code on that basis.

Accordingly, the authority must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The remaining submitted information must be released.

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# 462695

Enc. Submitted documents

c: Requestor
(w/o enclosures)