



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 31, 2012

Ms. Danielle R. Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-17374

Dear Ms. Folsom:

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# 469389 (GC No. 19919).

The City of Houston (the "city") received a request for debriefing and technical comments pertaining to a grant application submitted by New Hope Counseling Center and copies of three successful grant applications that were funded. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, although you take no position as to whether some of the submitted information is excepted under the Act, you state release of that may implicate the proprietary interests of several third parties. Accordingly, you state, and provide documentation showing, you notified Houston Volunteer Lawyers Program ("HVLP"), Service of the Emergency Aid Resource Center for the Homeless, Inc. ("SEARCH"), and Houston Area Community Services, Inc. ("HACS") of the request for information and of the right of each right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).* 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 information made confidential by other statutes. You argue federal law requires the city to keep confidential information relating to recipients of Housing Opportunities for Persons with AIDS ("HOPWA") grant money. The stated purpose of HOPWA is "to provide States and localities with the resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome and families of such persons." 42 U.S.C. § 12901. Section 12905(e) of chapter 42 of the United States Code requires the city to "ensure the confidentiality of the name of any individual assisted with amounts from a grant under this chapter and any other information regarding individuals receiving such assistance." *Id.* § 12905(e); *see also* 24 C.F.R. § 574.440. We believe the intent of this confidentiality provision is to keep confidential information that would tend to identify individual patients with AIDS and thereby prevent housing discrimination against such individuals.¹

You assert some of the information in Exhibit 5, which you have marked, identifies individual patients with AIDS. The information you marked consists of the names of the individuals, as well as company affiliations and addresses and home telephone numbers of the individuals at issue. We note our office has been provided with a letter written in September 2005 by Ms. Katie S. Worsham, Director with the U.S. Department of Housing and Urban Development ("HUD"), stating the confidentiality provision of section 574.440 of chapter 42 of the United States Code only obligates HUD and grantees to keep names of clients confidential. Accordingly, based on HUD's representation and our review of the responsive information, we conclude only the individuals' names and home telephone numbers, which we have marked, are confidential under section 12905 of chapter 42 of the United States Code and must be withheld under section 552.101 of the Government Code. However, the company affiliations and addresses at issue here do not identify the names of actual clients with AIDS who receive assistance. Thus, that information may not be withheld under section 552.101 in conjunction with section 12905 of chapter 42 of the United States Code.

You claim portions of Exhibit 6 are protected by section 552.101 of the Government Code. Section 552.101 also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the

¹*See generally Housing Needs of Persons With Acquired Immune Deficiency Syndrome (AIDS): Hearings before the Subcomm. on Housing and Community Development of the House Banking, Finance, and Urban Affairs Comm.*, 101st Cong. (1990) (hearing devoted to housing problems of persons with AIDS, their causes, such as discrimination, and their remedies); *see also National Housing Policy Conference and Public Hearing: Hearings before the Subcomm. on Housing and Urban Affairs, Senate Banking, Housing, and Urban Affairs Comm. and the Subcomm. on Housing and Community Development, House Banking, Finance, and Urban Affairs Comm.*, 100th Cong. p. 154 (1988).

applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. The type of information considered intimate or 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. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we agree the information you marked in Exhibit 6 is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the information you marked in Exhibit 6 under section 552.101 of the Government Code in conjunction with common-law privacy.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from HVLP, SEARCH, or HACS explaining why any of the remaining information at issue should not be released. Therefore, we have no basis to conclude either HVLP, SEARCH, or HACS has a protected proprietary interest in any of the remaining information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold any of the remaining information on the basis of any proprietary interest HVLP, SEARCH, or HACS may have in the information.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."² Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the bank account numbers we have marked under section 552.136 of the Government Code.³

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

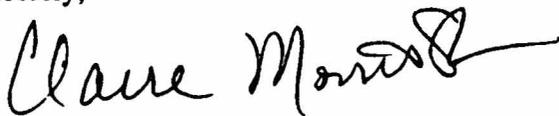
³We note section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

In summary, the city must withhold the information we marked in Exhibit 5 under section 552.101 of the Government Code in conjunction with section 12905 of chapter 42 of the United States Code. The city must also withhold the information you marked in Exhibit 6 under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the bank account numbers we marked under section 552.136 of the Government Code. The city must release the remaining information.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 469389

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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