



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2013

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

OR2013-02127

Dear Ms. White:

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# 478445 (PIR Nos. 2012-0001, 2012-0002, 2012-0004).

The Weatherford Housing Authority (the "authority"), which you represent, received three requests from the same requestor for twenty-two categories of information, including information pertaining to tenants and owners of housing units operated by private landlords who participated in the Section 8 housing program, amounts of subsidies paid for each unit, information pertaining to two named authority employees, and documents evidencing claims for damages, settlement agreements, and attorney fee bills. You state you will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You also state you will withhold driver's license numbers under section 552.130.² You claim the remaining submitted information is excepted from disclosure under section 552.101 of the Government

¹Section 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. Gov't Code § 552.147(b).

²Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* Gov't Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body's decision to withhold information under section 552.130(c) to attorney general and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor).

Code, as well as privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information.

We note, and you acknowledge, a portion of the submitted information is subject to section 552.022 of the Government Code. This section provides, in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(16). In this instance, the information at issue consists of attorney fee bills. Therefore, the information must be released under section 552.022 unless it is confidential under the Act or other law. You seek to withhold portions of the information at issue under rule 503 of the Texas Rules of Evidence. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will consider your assertion of the attorney-client privilege under rule 503 of the Texas Rules of Evidence.

Texas Rule of Evidence 503 enacts the attorney-client privilege. Rule 503(b)(1) provides as follows:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is “confidential” if it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show the communication is confidential by explaining it was not intended to be disclosed to third persons and it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *See Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You assert portions of the submitted fee bills, which you have marked, consist of privileged attorney-client communications between representatives of the authority and the authority’s outside counsel. You state the communications at issue were made in furtherance of the rendition of legal services to the authority, and have not been, and were not intended to be, disclosed to third parties. You have identified the parties to the communications in the submitted attorney fee bills. Accordingly, the authority may withhold the information we have marked under Texas Rule of Evidence 503. However, you have failed to demonstrate the remaining information you have marked consists of privileged attorney-client communications for the purposes of rule 503. Accordingly, we conclude rule 503 is not applicable to the remaining information you have marked, and it may not be withheld on this basis.

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 a portion 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”). As you acknowledge, 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 also seek to withhold a portion of the requested information pursuant to subsection 1437d(q) of title 42 of the United States Code. *See* 42 U.S.C. § 1437d(q). This subsection is 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 (“NCIC”), 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). Upon review, we find you have not established the information you have marked consists of criminal conviction records of adult applicants for, or tenants of, public housing received by the authority from the NCIC, police departments, or other law enforcement agencies. Thus, we conclude subsections 1437d(q)(4) and 1437d(q)(5) do not apply to the information at issue.

Section 552.101 of the Government Code also 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. This office has found personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision No. 545 (1990) (mortgage payments, assets, bills, and credit history).

In Open Records Decision No. 373 (1983), this office determined financial information submitted by applicants for federally-funded housing rehabilitation loans and grants was “information deemed confidential” by a common-law right of privacy. The financial information at issue in Open Records Decision No. 373 included sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history. Similarly, we thus conclude financial information relating to a public housing resident or an applicant for housing assistance 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.

The second requirement of the common-law privacy test requires the information not be of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 668. While the public generally has some interest in knowing whether public funds expended for housing assistance are being given to qualified applicants, we believe ordinarily this interest will not be sufficient to justify the invasion of the applicant’s privacy that would result from disclosure of information concerning his or her financial status. *See* ORD 373 (although any record maintained by governmental body is arguably of legitimate public interest, if only relation

of individual to governmental body is as applicant for housing rehabilitation grant, second requirement of common-law privacy test not met). In particular cases, a requestor may demonstrate the existence of a public interest that will overcome the second requirement of the common-law privacy test. However, whether there is a public interest in this information sufficient to justify its disclosure must be decided on a case-by-case basis. *See* Open Records Decision Nos. 523 (1989), 373.

Open Records Decision Nos. 373 and 523 draw a distinction between the confidential "background financial information furnished to a public body about an individual" and "the basic facts regarding a particular financial transaction between the individual and the public body." Open Records Decision Nos. 523, 385 (1983). Subsequent decisions of this office analyze questions about the confidentiality of background financial information consistently with Open Records Decision No. 373. *See* Open Records Decision Nos. 600 (1992) (personal financial information not relating to the financial transaction between an individual and a governmental body is protected), 545 (employee's participation in deferred compensation plan private), 523, 481 (1987) (individual financial information concerning applicant for public employment is closed), 480 (1987) (names of students receiving loans and amounts received from Texas Guaranteed Student Loan Corporation are public); *see also* Attorney General Opinions H-1070 (1977), H-15 (1973) (laws requiring financial disclosure by public officials and candidates for office do not invade their privacy rights). *But see* Open Records Decision Nos. 602 at 5 (1992) (records related to salaries of those employees for whom the city pays a portion are subject to the Act). We note, however, this office has concluded the names and present addresses of current or former residents of a public housing development are not protected from disclosure under the common-law right to privacy. *See* Open Records Decision No. 318 (1982). 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, 545, 489 (1987), 480. Upon review, we find none of the information at issue is highly intimate or embarrassing information of no legitimate public concern pertaining to an identified individual. Therefore, the authority may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the authority may withhold the information we have marked under Texas Rule of Evidence 503. The remaining 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,

A handwritten signature in cursive script that reads "Britni Fabian".

Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 478445

Enc. Submitted documents

c: Requestor
(w/o enclosures)