



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 27, 2013

Mr. Jack Nichols
Ewbank & Harris, P.C.
1210 Nueces Street
Austin, Texas 78701

OR2013-20680

Dear Mr. Nichols:

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# 507099.

The Housing Authority of the City of Austin (the "authority"), which you represent, received two requests from the same requestor for certain information pertaining to recipients of housing assistance and related landlords. The authority claims some of 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 representative sample of information.

Initially, we note, although the authority submitted income-related information of recipients of housing aid, the authority did not submit any of the requested information pertaining to landlords. Although you state the authority submitted a representative sample of the requested records, we find the responsive information is not representative of the requested landlord information. Please be advised this open records letter applies only to the types of information you have submitted for our review. Therefore, this letter ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See Gov't Code* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information is presumed to be public). Thus, to the extent any information responsive to the remaining items specified in the request, including the specified landlord information, existed and was maintained by the authority when it received the request, we assume it has been released. If such information has not been released, then

it must be released at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 protected by other statutes, such as section 552a of title 5 of the United States Code, also known as the Federal Privacy Act. We note this office has stated in numerous opinions that information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure merely because the same information is or would be confidential in the hands of a federal agency. *See, e.g.*, Attorney General Opinion MW-95 (1979) (concluding neither the federal Freedom of Information Act nor the federal Privacy Act applies to records held by state or local governmental bodies in Texas). However, this office has also held section 552.101 requires a local governmental entity that has obtained information from a federal agency to respect confidentiality imposed on the information by federal law. *See* Open Records Decision No. 561 (1990).

The Privacy Act provides in part “[n]o [federal] agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be” allowed by one of twelve enumerated exceptions. 5 U.S.C. § 552a(b).

You indicate the information you have marked was obtained by the authority from the Enterprise Income Verification (“EIV”) system of the Office of Public and Indian Housing (“PIH”) of the U.S. Department of Housing and Urban Development (“HUD”). You explain the EIV system is a federal database containing income and asset information from the records of the Internal Revenue Service, the federal Department of Health and Human Services, and the federal Social Security Administration. You inform us the authority is a contractor operating a system of records to accomplish HUD’s function of determining eligibility and maintaining and operating HUD’s Public Housing and Section 8 Programs pursuant to the authority’s annual contributions contracts with HUD. You state the information at issue is confidential under the Privacy Act pursuant to HUD Notice PIH 2010-19 (HA), which provides in relevant part the following:

18. Disclosure of an Individual’s EIV Information. The Federal Privacy Act . . . prohibits the disclosure of an individual’s information to another person without the written consent of such individual EIV information and any other information obtained by the PHA for the purpose of determining eligibility and level of assistance for a PIH rental assistance program may not be disclosed to third parties for any reason (even for similar verifications under other programs, such as eligibility for low income housing tax credit

units, other federal or state assistance programs), unless the tenant has authorized such disclosure in writing.

HUD Notice PIH 2010-19 (HA) at 15-16 (May 17, 2010). You assert the department received and maintains the requested EIV information at issue from HUD for the purpose of determining the eligibility and level of assistance for a PIH rental assistance program pursuant to its agreement with HUD. Thus, you argue the authority is required to maintain the privacy of this information pursuant to the Privacy Act. Based on these representations, we find the information at issue, which you have marked, is confidential pursuant to the Privacy Act. Release of the submitted information in response to the request would not be a release in accordance with the exceptions to the Privacy Act. Therefore, the authority must withhold the information you have marked under section 552.101 of the Government Code in conjunction with federal law.¹ The authority 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 507099

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we do not address your other argument to withhold this information.