



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 8, 2016

Ms. Cary Grace
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2016-05375

Dear Ms. Grace:

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# 601600.

The City of Austin (the "city") received a request for all communications between three named individuals during a specified time period.¹ The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted representative sample of information.²

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore 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.

The city has marked some of the submitted information as not responsive. 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. This exception encompasses information other statutes make confidential. In addition, a federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101 of the Act. *See* Open Records Decision No. 599 at 4 (1992). The city raises section 552.101 in conjunction with part 24 of title 49 of the Code of Federal Regulations, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the “Uniform Act”), and pertains to relocation assistance and real property acquisition for federal and federally-assisted programs. Section 4633 of title 42 of the United States Code authorizes the Secretary of Transportation to prescribe regulations necessary to carry out the Uniform Act. *See* 42 U.S.C. § 4633. Section 24.9 of title 49 of the Code of Federal Regulations states, in part:

(a) Records. The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the Federal funding Agency, whichever is later.

(b) Confidentiality of records. Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

49 C.F.R. § 24.9(a)-(b). The city asserts it is an “agency” as understood by this section. “Agency” means a federal agency, state, state agency, or a person that acquires real property or displaces a person from property. *See id.* § 24.2(a)(1). “State Agency” means any department, agency or instrumentality of a state or of a political subdivision of a state, and any person who has the authority to acquire property by eminent domain under state law. *See id.* § 24.2(a)(1)(iv). The city states the responsive information consists of acquisition and displacement records maintained by the city as part of the acquisition and relocation policy for the properties located in the Onion Creek United States Army Corps of Engineers Buyout Project area. The city informs us it is required “to maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with part 24.” The city further states the responsive information is maintained by the city in accordance with part 24 of title 49 of the Code of Federal Regulations. Based upon the city’s representations and our review, we agree the responsive information is confidential under

section 24.9(b) of title 49 of the Code of Federal Regulations. Thus, the city must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 4633 of title 42 of the United States Code and section 24.9(b) of title 49 of the Code of Federal Regulations.³

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 601600

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address the city's remaining argument against disclosure.