



February 23, 1999

Mr. John Steiner
Division Chief
City of Austin -- Law Department
P.O. Box 1088
Austin, Texas 78767-1088

OR99-0529

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 122225.

The City of Austin (the "city") received a request for "any information and documents . . . concerning administrative complaints that have been filed against Windcrest at Parkside Apartments, Windcrest on Yager Lane Apartments, or APH Management."¹ Specifically, the requestor asks for "the date of the complaint, the name of the complainant, the investigator assigned to the complaint, and the outcome of the complaint," and "any and all additional information and documents your office can release." In response to the request, you submit to this office for review the information at issue, consisting of one "pending" and one "closed" file.² You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.110, and 552.111 of the Government Code. We have considered the exceptions and arguments you have raised and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."³ You seek to withhold both

¹Pursuant to section 552.305, we notified Windcrest/Yager Lane I, Ltd., and America's Preferred Homes, Inc., whose proprietary interests may be implicated by this request for information, and provided them with an opportunity to claim that the information at issue is excepted from disclosure. See Gov't Code § 552.305; Open Records Decision No. 542 (1990).

²You have also submitted to this office information that apparently was sent for informational purposes only. In this ruling, we do not address the public disclosure of that information.

³This section applies to information made confidential by federal law as well as state law. See Open Records Decision No. 476 at 5 (1987). Information made confidential by federal law includes information

“housing discrimination complaint” files, in their entirety, under the federal Fair Housing Act. *See* 42 U.S.C. § 3601; *see generally* Open Records Decision No. 476 (1987) and authorities cited therein (federal regulations adopted pursuant to statutory authority provide statutory confidentiality for purposes of statutory predecessor to section 552.101). Specifically, title 24, section 103.330 of the Code of Federal Regulations provides that

(a) Except as provided in paragraph (b) of this section and § 103.230(c),⁴ *nothing that is said or done in the course of conciliation under this part may be made public* or used as evidence in a subsequent administrative hearing under Part 180 or in civil actions under Title VIII of the Fair Housing Act, without the written consent of the persons concerned.

(b) Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the Assistant Secretary

made confidential by a federal statute or a federal regulation. *Id.*; *cf.* Open Records Decision No. 294 at 2 (1981). Furthermore, when information in the possession of a federal agency is considered confidential under federal law, the information remains confidential when it is shared with a governmental body in Texas. Open Records Decision No. 561 at 7 (1990).

⁴Section 103.230 provides, in relevant part, as follows:

(a) At the end of each investigation under this part, the Assistant Secretary will prepare a final investigative report. The investigative report will contain:

(1) The names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses that request anonymity. HUD, however, may be required to disclose the names of such witnesses in the course of an administrative hearing under Part 180 of this chapter or a civil action under Title VIII of the Fair Housing Act;

(2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(3) A summary description of other pertinent records;

(4) A summary of witness statements; and

....

(c) Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in § 103.330, the Assistant Secretary will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent. Following the completion of investigation, the Assistant Secretary shall notify the aggrieved person and the respondent that the final investigation report is complete and will be provided upon request.

determines that disclosure is not required to further the purposes of the Fair Housing Act. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the Assistant Secretary may publish tabulated descriptions of the results of all conciliation efforts.

(Italics and footnote added). The federal regulation is also replicated by state regulation concerning investigation of discrimination complaints under the Texas Fair Housing Act. Prop. Code §§ 301.001 *et seq.* We agree that some of the submitted records appear to be records subject to section 103.330. Further, there is no record or representation of a “written consent of the persons concerned,” in order to allow release of any portion of the submitted records. Based on our interpretation of the regulations, we believe that *except* for the initial “Complaint” and the “Final Investigative Report” from the “closed” file and the initial “Complaint” from the “pending” file, most of the remaining records must be withheld under the federal and state regulations, in conjunction with section 552.101 of the Government Code. 24 C.F.R. §§ 103.330(a) *et seq.*; Prop. Code §§ 301.001 *et seq.*

We note, however, that section 301.085(d) of the Property Code and title 24, section 103.330(b) of the Code of Federal Regulations, include provisions stating that conciliation agreements are public, unless the complainant and respondent request non-disclosure *and* the applicable agency determines that disclosure is not required to further the purposes of the Fair Housing Act. In this instance, you have not submitted any records indicating that either of the two conditions necessary to withhold a conciliation agreement have been met. Therefore, to the extent a “conciliation agreement” exists in the pending or closed file, the information must be made public.⁵

As a summary, we note that except for the initial “Complaint,” “Final Investigative Report,” “Request to Withdraw Charge,” and “Administrative Closure” letter, submitted as part of the “closed” file and the initial “Complaint” from the “pending” file, the remaining records may be withheld under section 552.101 in conjunction with the federal and state regulations.⁶ In addition, based on the submitted records and your arguments, we do not believe that any of your other arguments against disclosure allow withholding of the specified records which are not subject to the state and federal regulations.

⁵Although you have not submitted a document titled “Conciliation Agreement,” we note that section 301.003 of the Property Code defines it as “a written agreement resolving the issues in conciliation.” *See* 24 C.F.R. § 103.9 (“Conciliation agreement means a written agreement setting forth the resolution of the issues in conciliation”). However, included with the “closed” file, you have submitted two documents, a “Request to Withdraw Charge” and an “Administrative Closure” letter that set out the issues relevant to the withdrawal of the charge.

⁶We also note that based on the federal and state regulations, a complainant or respondent is entitled to the disclosure of additional records. *See generally* 24 C.F.R. § 103.230(a); Prop. Code § 301.085(f).

We are resolving this matter with an informal letter ruling rather than with a published open records decision.⁷ This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 122225

Enclosures: Submitted documents

cc: Ms. Heather K. Way
Legal Aid
205 West 9th Street, Suite 200
Austin, Texas 78701
(w/o enclosures)

Mr. James G. Ruiz
Counsel for Windcrest/Yager Lane I, Ltd.
Winstead, Sechrest & Minick
100 Congress Avenue, Suite 800
Austin, Texas 78701-4042
(w/o enclosures)

Mr. Charlie Palmer
c/o Meadow Ridge Apartments
APH Management
2501 Louis Henna Boulevard
Round Rock, Texas 78664
(w/o enclosures)

⁷In this instance, as the records of the third-parties are withholdable under section 552.101 and the cited provisions, we need not address the applicability of section 552.110 to the submitted information.