



June 4, 2001

Ms. Daisy A. Stiner  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

OR2001-2292

Dear Ms. Stiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147888.

The Department of Housing and Community Affairs (the "department") received a request for an investigation report and information forwarded by the department to the Internal Revenue Service (the "IRS"). You indicate that you have released some of the requested information. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.026, 552.101, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

We first address your argument that some of the submitted information is excepted under sections 552.026 and 552.114 of the Government Code and the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

---

<sup>1</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Thus, FERPA and the accompanying Government Code provisions govern the availability of student or education records held by educational agencies or institutions. *See* 20 U.S.C. § 1232g(b)(1); Gov't Code §§ 552.026, 552.114. FERPA generally does not govern access to records in the custody of governmental bodies that are not educational agencies or institutions. *See* Open Records Decision No. 390 at 3 (1983). An exception to this rule applies if the governmental body received the records from an educational agency under written consent of the student. 20 U.S.C. 1232g(b)(4)(B). Here, you indicate that the department received the records at issue from "individuals and families" seeking to qualify for low income housing. Based on this representation, we assume the department did not receive the records at issue from an educational agency or institution. Consequently, none of the requested information is confidential under FERPA or section 552.114 of the Government Code. *Id.*; *see* 20 U.S.C. § 1232g(a)(3), (b)(4)(B).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. Therefore, the submitted tax return information is confidential and must be withheld under section 552.101 of the Government Code. We have marked this information.

You also indicate that some of the requested information is excepted under section 301.081 of the Labor Code. Section 301.081 provides in pertinent part as follows:

(a) Each employing unit shall keep employment records containing information as prescribed by the [Texas Workforce Commission] and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.

....

(c) Employment information thus obtained or otherwise secured may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title.

You indicate that the responsive information includes income verification information that the department received from the Texas Workforce Commission (the "commission").<sup>2</sup> Based on your representations and our review of the information, we agree that the income verification information is confidential under section 301.081 of the Labor Code and therefore must be withheld under section 552.101 of the Government Code. We have marked the income verification information that must be withheld.

The submitted information also contains social security numbers that may be confidential under federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, you indicate that some of the requested information is confidential under section 2306.039 of the Government Code. Section 2306.039 states:

(a) Except as provided by Subsection (b), the department and the Texas State Affordable Housing Corporation are subject to Chapters 551 and 552.

(b) This section does not apply to the personal financial information submitted by an individual or family for a loan, grant, or other housing assistance under a program administered by the department or the Texas State Affordable Housing Corporation or from bonds issued by the department, except that the department and the corporation are permitted to disclose information about any applicant in a form that does not reveal the identity of the individual or family for purposes of determining eligibility for programs and in preparing reports required under this chapter.

---

<sup>2</sup>It is the well-settled policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. Attorney General Opinion H-683 (1975); Open Records Decision No. 677 (2000). The Texas Public Information Act does not undercut that policy. Attorney General Opinion H-683. Confidential information may be transferred between state agencies without destroying its confidential character and without constituting a release to the public if the agency to which the information is transferred has authority to obtain the information. Open Records Decision Nos. 677 (2000), 516 (1989), 490 (1988). Consequently, confidential information may be "transferred between state agencies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between state agencies." Attorney General Opinion H-683 at 4; *see* ORD 677. In this regard, you have submitted to this office a copy of an agreement between the department and the commission under which the commission agrees to provide the department wage record information for purposes of verifying certain individuals' incomes and the department agrees not to re-release the information except as specifically required in order to discharge its duties.

Gov't Code § 2306.039. You indicate that some of the requested information was submitted by individuals and families to qualify for low income rental housing under the department's Low Income Housing Tax Credit program. Based on your contentions and our review of the information, we agree that some of the submitted documents contain personal financial information that is subject to section 2306.039 and therefore is not subject to disclosure under the Public Information Act. You indicate that the department will redact identifying information from the documents containing the personal financial information so it can release the remainder of the documents to the requestor. However, a release of information under the Act is not a release for the purposes of determining eligibility for programs or in preparing reports under chapter 2306 of the Government Code. Thus, you may not redact identifying information from the documents containing confidential personal financial information and release the remainder of the documents. Rather, you must withhold the personal financial information pursuant to section 552.101 in conjunction with section 2306.039 of the Government Code and release the remainder of the information that is not otherwise confidential. We have marked the personal financial information that must be withheld. Based on this holding, we need not reach your argument that the same information is excepted under common law privacy.

In summary, you must withhold the tax return information and the income verification information received from the Texas Workforce Commission under section 552.101. You must also withhold any social security numbers contained in the requested information to the extent you obtained or maintained the social security numbers pursuant to a provision of law enacted on or after October 1, 1990. Finally, you must withhold the personal financial information contained in the documents provided to the department by individuals and families seeking to qualify for low income rental housing. You must release the remainder of the requested information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

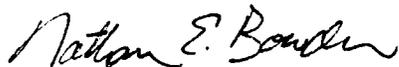
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/sdk

Ref: ID# 147888

Encl: Submitted documents

cc: Mr. Ronald C. Waters  
1722 Strauss Road  
Cedar Hill, Texas 75104  
(w/o enclosures)