



July 3, 2001

Ms. Sarajane Milligan  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR2001-2861

Dear Ms. Milligan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149081.

The Harris County Community Development Department (the “county”) received a written request for “all correspondence including but not limited to: Rental Agreements; contracts, Inspection Reports; Rent Payment History; and Records of Conversation; pertaining to the landlord and [a list of nine properties] for the period January 1999 to the present.” You state that the county possesses responsive records only with regard to two of the listed properties, which serve as public housing. You contend that the requested information is excepted from disclosure under section 552.101 of the Government Code. You also contend that some of the information at issue must be withheld from the public pursuant to section 552.130 of the Government Code. You have submitted to this office for review a representative sample of the types of documents you seek to withhold.<sup>1</sup>

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” You contend that the

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<sup>1</sup>In reaching our conclusion here, 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 No. 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.

requested information may be confidential under the federal Privacy Act, 5 U.S.C. § 552a. However, you have not explained how the Privacy Act applies to the county or how it would otherwise govern the release of records held by the county. See 5 U.S.C. §§ 552a(a)(1), 552(f) (defining “agency” for purposes of Privacy Act and federal Freedom of Information Act). Absent such a demonstration, we conclude that none of the information at issue comes under the protection of the Privacy Act.

Section 552.101 also protects information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

Section 552.101 also embraces constitutional privacy. See *Industrial Found.*, 540 S.W.2d at 678. The constitutional right to privacy consists of two related interests: 1) the individual interest in independence in making certain kinds of important decisions, and 2) the individual interest in independence in avoiding disclosure of personal matters. The first interest applies to the traditional “zones of privacy” described by the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973), and *Paul v. Davis*, 424 U.S. 693 (1976). These “zones” include matters related to marriage, procreation, contraception, family relationships, and child rearing and education and are clearly inapplicable here.

The second interest, in nondisclosure or confidentiality, may be somewhat broader than the first. Unlike the test for common law privacy, the test for constitutional privacy involves a *balancing* of the individual’s privacy interests against the public’s need to know information of public concern. Although such a test might appear more protective of privacy interests than the common law test, the scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the “most intimate aspects of human affairs.” See Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)).

In Open Records Decision No. 318 (1982), this office concluded that the names and present addresses of former residents of a public housing development were not excepted by constitutional or common law privacy. This office has also found that information on a housing grant application regarding the applicant’s family composition, employment, age, and ethnic origin is not ordinarily excepted by common law privacy. Open Records Decision No. 373 (1983). Likewise, the amounts paid by a housing authority on behalf of eligible tenants are not excepted by privacy interests. Open Records Decision No. 268 (1981); see also Open Records Decision Nos. 600 at 9-10 (1992), 545 (1990), 489 (1987), 480 (1987) (noting legitimate public interest in essential facts about financial transaction between individuals and governmental bodies). We therefore conclude that most of the information you seek to withhold is not protected by either common law or constitutional privacy.

On the other hand, other personal financial information regarding public housing tenants is excepted from required public disclosure under section 552.101. In Open Records Decision No. 373 (1983), this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. In that decision, this office concluded:

all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily 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.

Open Records Decision No. 373 at 3. Whether the public has a legitimate interest in an individual's sources of income must be determined on a case-by-case basis. *Id.* at 4; *see also* Open Records Decision Nos. 600 (1992); 545 (1990). In this instance, there has been no showing by the requestor that there exists a legitimate public interest in revealing the sources of income, the personal assets, or the previous credit history of the tenants of the public housing. We therefore conclude that the county must withhold all such information pursuant to section 552.101 of the Government Code. We have marked the documents you submitted to this office as Exhibit B to indicate the types of information the county must withhold from the requestor in order to protect the privacy interests of the public housing tenants.

You also contend that the records at issue are made confidential under the federal Public Health and Welfare Act (the "PHWA"), 42 U.S.C. § 3544. The PHWA provides for the confidentiality of certain records held by, among others, "representatives of public housing agencies." Specifically, the PHWA provides that the following categories of information may be used only for the purpose of verifying an applicant's or participant's eligibility for or level of benefits: 1) unemployment compensation income, 2) additional sources of earned income, and 3) federal income tax return information. 42 U.S.C. § 3544(c)(2)(A). Because we conclude that these categories of information are protected by privacy interests, *see* discussion above, we need not further address the applicability of the PHWA here, except to note that the information at issue not protected by privacy interests also is not made confidential under the PHWA.

We also note that social security numbers are excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), but only if the social security numbers were obtained or are maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the county pursuant to any provision of law enacted on or after

October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the county to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the county should ensure that these numbers were not obtained or maintained by the county pursuant to any provision of law enacted on or after October 1, 1990.

Finally, the records at issue contain information that must be withheld pursuant to section 552.130(a)(1) of the Government Code, which requires the county to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Also, section 552.130(a)(2) of the Government Code requires the withholding of information relating to "a motor vehicle title or registration issued by an agency of this state." Consequently, the county must withhold all Texas driver's license numbers and all Texas license plate numbers and registration information contained in the records at issue pursuant to section 552.130.

In summary, the county is required to withhold tenants' personal financial information except for information that pertains to a financial transaction between the county and the tenant, which must be released. The county must also withhold all Texas driver's license numbers and all Texas license plate numbers and registration information pursuant to section 552.130. The remaining requested information must be released to the requestor.

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 Department of Public 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,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/RWP/seg

Ref: ID# 149081

Enc. Submitted documents

c: Ms. B. Faye Stewart-Henderson  
P.O. Box 62255  
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(w/o enclosures)