



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2005

Ms. Michele Austin
Assistant City Attorney
City of Houston
Legal Department
P. O. Box 368
Houston, Texas 77001-0368

OR2005-06570

Dear Ms. Austin:

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# 228851.

The City of Houston (the "city") received a request for "a copy of the application for funding originally submitted to [the Department of Housing and Community Development] by Self Sufficiency Thru Housing & Economic Development [for a specified property, including] a copy of the contract awarded . . . as a result of the approval application." You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code. We assume the remaining requested information you do not claim is excepted from disclosure has been released to the extent it existed on the date the city received this request. If not, the city must do so at this time. *See Gov't Code* §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note, and you acknowledge, that the city has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision

¹We 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.

from this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling interest to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Because sections 552.101 and 552.136 can provide a compelling reasons to withhold information, we will consider your arguments regarding these exceptions.

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 the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In Open Records Decision No. 373 (1983), this office found that “all financial information relating to an individual—including sources of income, salary, mortgage payments, assets, . . . retirement and state assistance benefits, and credit history—ordinarily satisfies” the first prong of the *Industrial Foundation* test. The second part of the *Industrial Foundation* test requires that the information in question not be of legitimate concern to the public. The public generally has a legitimate interest in information regarding the receipt of governmental funds or debts to governmental entities. Open Records Decision No. 545 at 4 (1990); *see also* Open Records Decision Nos. 480 (1987), 385 (1983). However, this office has found that financial information relating to an individual applicant of a housing rehabilitation grant is not of a legitimate public concern. Open Records Decision No. 373 at 4 (1983). After reviewing the documents at issue, we conclude that the monthly gross incomes of individual recipients of housing assistance must be withheld pursuant to section 552.101 in conjunction with common-law privacy. We have marked this information that must be withheld on this basis.

We next address your claim under section 552.136 of the Government Code, which states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136. The city must, therefore, withhold the insurance policy numbers and the bank routing and account numbers that we have marked pursuant to section 552.136.

Lastly, you note that the submitted information includes social security numbers. Section 552.147 of the Government Code² provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Public Information Act

²Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

(the “Act”). Therefore, the city must withhold the social security numbers it has highlighted under section 552.147.³

In summary, the city (1) must withhold the information we have marked under section 552.101 of the Government code in conjunction with common-law privacy; (2) must withhold the insurance policy numbers and the bank routing and account numbers we have marked pursuant to section 552.136 of the Government Code; (3) must withhold the social security numbers the city has marked in accordance with section 552.147 of the Government Code; and (4) must release the remaining information at issue.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 228851

Enc. Submitted documents

c: Ms. Marvalette Hunter
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(w/o enclosures)