



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2007

Mr. Rashaad V. Gambrell
Assistant City Attorney
City of Houston - Legal Department
P. O. Box 368
Houston, Texas 77001-0368

OR2007-02807

Dear Mr. Gambrell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 274874.

The City of Houston (the "city") received a request for an electronic copy of a database containing all active Hurricane Katrina evacuees in Houston. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered arguments submitted by the Federal Emergency Management Agency ("FEMA"). *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Both the city and FEMA assert that the requested information is excepted from disclosure under section 552.101 in conjunction with the Privacy Act of 1974 (the "Privacy Act"), section 552a of title 5 of the United States Code. We note that this office has stated in numerous opinions that information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure merely because the same information is or would be confidential in the hands of a federal agency. *See, e.g.*, Attorney General Opinion MW-95 (1979) (concluding that neither the federal Freedom of Information Act nor the federal Privacy Act applies to records held by state or local governmental bodies

in Texas). However, this office has also held that section 552.101 requires a local governmental entity that has obtained information from a federal agency to respect confidentiality imposed on the information by federal law. See Open Records Decision No. 561 (1990).

The Privacy Act provides in part “[n]o [federal] agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure would be” allowed by one of twelve enumerated exceptions. 5 U.S.C. § 552a(b).

You inform us that the submitted information was compiled by FEMA and pertains to the provision of emergency federal assistance. You further state that this information was provided to the city “to assist in providing disaster assistance to displaced residents impacted by Hurricane Katrina.” FEMA asserts that any individually identifying information from its Disaster Assistance Recovery Files is protected by the Privacy Act. FEMA also informs us that “[the city] has an affirmative duty not to disclose this information and to assert those arguments established by the Privacy Act in the same manner as FEMA.” We therefore find that the submitted information is confidential pursuant to the Privacy Act, and it retained its confidentiality when it was transferred to the city. Release of the submitted information in response to the present request would not be a release in accordance with the exceptions to the Privacy Act. Therefore, the submitted information must be withheld under section 552.101 of the Government Code in conjunction with federal law. Because our ruling on this issue is dispositive, we need not address the city’s remaining arguments.

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); *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 Office of the Attorney General 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,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/krl

Ref: ID# 274874

Enc. Submitted documents

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