



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2007

Mr. Kevin S. Wiley, Jr.
Gant & Gant, P.C.
1409 South Lamar Suite 711
Dallas, Texas 75215

OR2007-05643

Dear Mr. Gant:

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# 279256.

The Fort Worth Housing Authority (the "authority"), which you represent, received a request for all authority files concerning the requestor. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.¹

First, we must address the authority's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See Gov't Code* § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply

¹This letter ruling assumes that the submitted "sampling" of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the authority to withhold any information that is substantially different from the submitted information. *See Gov't Code* §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. – Austin 1990, no writ).

We first note that the authority has redacted portions of the submitted documents. As a general rule, a governmental body that seeks to withhold information from the public must submit that specific information, or a representative sample of the information, to this office for a ruling under the Act, unless the information is the subject of a previous determination under section 552.301. *See* Gov't Code § 552.301(a), (e)(1)(D); Open Records Decision No. 673 (2001) (previous determinations); *but see* Gov't Code § 552.147(b) (governmental body may redact living person's social security number from public release without necessity of requesting decision). You do not indicate that a previous determination has been issued to the authority, and this office has no record of the issuance of such a decision. Thus, the authority may not withhold the redacted portions of the submitted documents unless an exception to disclosure is applicable. Because you have completely concealed the nature of the redacted information, we have no means of determining whether any of that information falls within the scope of an exception to disclosure. Therefore, the redacted information must be released.

We also note that the authority failed to comply with the deadline prescribed by section 552.301(b) in requesting this decision.² *See* Gov't Code §§ 552.301(b). Therefore, all of the submitted information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will consider your arguments.

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. You raise section 552.101 in conjunction with constitutional privacy, which protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in

²As the authority appears to have received this request for information on March 5, 2007, its 10-business-day deadline under section 552.301(b) was March 19. The envelope in which the authority submitted its request for this decision is meter-marked March 20. *See* Gov't Code § 552.308 (providing standards for timeliness of action by United States or interagency mail or common contract carrier).

independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); Open Records Decision No. 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); Open Records Decision No. 455 at 6-7. This aspect of constitutional privacy balances the individual’s privacy interest against the public’s interest in the information. *See* Open Records Decision No. 455 at 7. Constitutional privacy under section 552.101 is reserved for “the most intimate aspects of human affairs.” *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). Common-law privacy also encompasses certain types of personal financial information. This office has determined that financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body).

You seek to withhold the addresses and telephone numbers of tenants of the authority and tenant leasing information. This office has determined that an individual’s home address and telephone number are generally not private information. *See* Open Records Decision Nos. 554 at 3 (1990) (disclosure of person’s home address and telephone number is not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers ordinarily do not qualify as “intimate aspects of human affairs” that are protected by disclosural privacy), 318 at 2 (1982) (names and present addresses of former residents of public housing development not protected by constitutional or common-law privacy). We therefore conclude that the authority may not withhold the addresses and telephone numbers of its tenants under section 552.101 in conjunction with either constitutional or common-law

privacy. Likewise, we conclude that the authority may not withhold any of the submitted tenant leasing information under section 552.101 on privacy grounds. *See* Open Records Decision Nos. 443 at 4 (1986) (utility bill ledgers not private; public has genuine interest in knowing who owes money to governmental entity), 268 at 2 (1981) (addresses of subsidized housing units, names of owners, and amounts of individual subsidies paid for each unit not protected by common-law privacy). We further conclude, however, that certain other information contained in the submitted documents is protected by common-law privacy. The authority must withhold that information, which we have marked, under section 552.101 of the Government Code. The rest of the submitted information must be released.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 279256

Enc: Submitted documents

c: Mr. Brian Gilbert
c/o Mr. Kevin S. Wiley, Jr.
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(w/o enclosures)