



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 3, 2007

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 53404
Grand Prairie, Texas 75053-4045

OR2007-08480

Dear Mr. Alcorn:

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# 283060.

The City of Grand Prairie (the "city") received two requests from the same requestor for all records pertaining to the city's Section 8 office and a specific apartment complex for a specified period, and all correspondence between the city's Section 8 office and the HUD regional and national offices for a specified period. You state that you will provide the requestor with a portion of the requested information. We understand you to claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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. This section encompasses information protected by other statutes. You assert that the information at issue

¹ 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.

is confidential under section 552a of Title 5 of the United States Code, also known as the federal Privacy Act. Section 552a provides in part that “[n]o 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[.]” 5 U.S.C. § 552a(b). We note, however, that, for purposes of section 552a, “agency” means an agency, department, corporation, or other instrumentality of the federal government. *See id.* §§ 552(a)(1), 552(f)(1); *see also St. Michael’s Convalescent Hosp. v. State of California*, 643 F.2d 1369, 1373 (9th Cir. 1981) (definition of agency under Privacy Act does not encompass state agencies or bodies); *Shields v. Shetler*, 682 F.Supp. 1172, 1176 (D. Colo. 1988) (Privacy Act does not apply to state agencies or bodies). The city is not an “agency” for purposes of section 552a; thus, the city may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 552a of Title 5 of the United States Code.

Section 552.101 also encompasses common-law privacy. Information is protected from disclosure under the common-law right to privacy 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In addition, prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body not excepted from disclosure).

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 protected from disclosure under the common-law right to privacy. *See* ORD 318. This office has also found that information contained in a housing grant application regarding an applicant’s family composition, employment, age, and ethnic origin is not information that is ordinarily protected from disclosure under the common-law right to privacy. *See* Open Records Decision No. 373 (1983). Likewise, the amounts paid by a housing authority on behalf of eligible tenants are not protected from disclosure under privacy interests. *See* Open Records Decision No. 268 (1981); *see also* ORD 600 at 9-10, Open Records Decision Nos. 545 (1990), 489 (1987), 480 (1987). On the other hand, this office has also found that personal financial information regarding public housing tenants is excepted from disclosure pursuant to section 552.101 of the Government Code.

In Open Records Decision No. 373, 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.

ORD 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. *See id.* at 4; *see also* ORD 600, 545. Based on your representations and our review, the city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

We note that the submitted documents contain information that is excepted from disclosure under section 552.130 of the Government Code.² Section 552.130 excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Therefore, the city must withhold the Texas motor vehicle record information we have marked under section 552.130.

Additionally, we note that the remaining information contains bank account numbers. Section 552.136 of the Government Code provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(b) Notwithstanding 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. We have marked account numbers in the information at issue that must be withheld under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The city must also withhold the Texas motor vehicle record information we have marked under section 552.130. Additionally, the city must withhold the account numbers we have marked pursuant to section 552.136 of the Government Code. The remaining information must be released to the requestor.³

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).

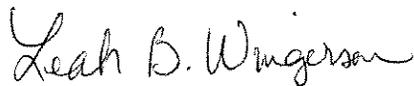
³ We note that the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/sdk

Ref: ID# 283060

Enc. Submitted documents

c: Mr. Charles R. Livecchi
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Rochester, New York 14606
(w/o enclosures)