



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2007

Ms. Yushan Chang
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2007-11094

Dear Ms. Chang:

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# 287593.

The City of Houston (the "city") received a request for twenty-four categories of information pertaining to a specified Housing Opportunities for People with AIDS needs assessment. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the city failed to follow its procedural obligations under section 552.301 of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code

¹We note that the requestor agreed to allow the commission to redact driver's license information, credit and debit card numbers, e-mail addresses, and social security numbers. As this information is no longer encompassed by the request, it is not responsive and we do not address its availability in this ruling.

§ 552.301(b). Section 552.301(e) then requires that the governmental body submit comments explaining how the stated exceptions apply no later than the fifteenth business day after receiving the request. *Id.* § 552.301(e)(1)(A). The city received the request for information on June 5, 2007. The envelope containing the city's stated exceptions is postmarked June 18, 2007, and the envelope containing the city's comments explaining how the stated exceptions apply and responsive information is postmarked June 21, 2007. Upon review of the requestor's arguments, we conclude that the requestor has failed to establish that the city violated the procedural requirements of section 552.301. *See* Gov't § 552.308 (a document is timely if it is sent via first class United States mail and bears a post office cancellation mark indicating a time with procedural requirements of section 552.301).

Next we note that the request at issue requests twenty-four categories of documents. You have only submitted information responsive to categories nine and ten of the request. To the extent any information responsive to the remaining twenty-two categories existed on the date the city received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. Section 552.101 encompasses information made confidential by other statutes. The city argues that federal law requires it to keep confidential information that relates to recipients of Housing Opportunities for Persons with AIDS ("HOPWA") grant money. The stated purpose of HOPWA is "to provide States and localities with the resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome and families of such persons." 42 U.S.C. § 12901. Section 12905(e) of chapter 42 of the United States Code requires that the city "agree to ensure the confidentiality of the name of any individual assisted with amounts from a grant under this chapter *and any other information regarding individuals receiving such assistance.*" *Id.* § 12905(e) (emphasis added); *see also* 24 C.F.R. § 574.440. We believe that the intent of this confidentiality provision is to keep confidential information that would tend to identify individual patients with AIDS and thereby prevent housing discrimination against such individuals.²

²*See generally* Housing Needs of Persons With Acquired Immune Deficiency Syndrome (AIDS): Hearings before the Subcomm. on Housing and Community Development of the House Banking, Finance, and Urban Affairs Comm., 101st Cong. (1990) (hearing devoted to housing problems of persons with AIDS, their causes, such as discrimination, and their remedies); *see also* National Housing Policy Conference and Public Hearing: Hearings before the Subcomm. on Housing and Urban Affairs, Senate Banking, Housing, and Urban Affairs Comm. and the Subcomm. on Housing and Community Development, House Banking, Finance, and Urban Affairs Comm., 100th Cong. p. 154 (1988).

The city has provided a statement from the city Housing and Community Development Department that explains that the names and addresses contained in Exhibit 2 identifies individuals who receive and spend HOPWA funding. Based on this representation, we conclude that release of this information would tend to identify individual patients with AIDS. Accordingly, the city must withhold the names and addresses contained in Exhibit 2 under section 552.101 in conjunction with section 12905(e) of the United States Code. The remaining 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).

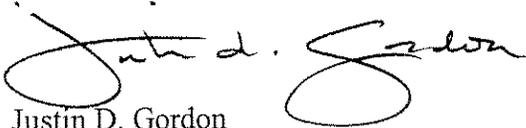
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 that reads "Justin D. Gordon". The signature is fluid and cursive, with the first name "Justin" and last name "Gordon" clearly legible.

Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 287593

Enc. Submitted documents

c: Concerned Citizens for Fiscal Responsibility
P.O. Box 130303
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(w/o enclosures)