



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 18, 2008

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

OR2008-08382

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# 313191.

The City of Houston (the "city") received two requests from the same requestor for several categories of information regarding Housing Opportunities for Persons with AIDS ("HOPWA") housing and funding. You state that you are releasing some information to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.136, 552.137, and 552.147 of the Government Code. You also indicate that some of the submitted information may implicate the privacy interests of several third parties and have provided documentation showing that pursuant to section 552.305 of the Government Code you notified the interested third parties of the request for information and of their right to submit arguments explaining why the information at issue should not be released.¹ *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). 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 third party may submit comments stating why information should or should not be released).

Initially, we note that the requestor excludes the following categories of information from his requests: the HIV status of individuals; certain e-mail addresses; the addresses of apartment complexes receiving HOPWA assistance; the identities of individuals who have

¹The interested third parties are as follows: Bonita House of Hope; A Caring Safe Place, Inc.; Houston HELP, Inc.; Fort Bend County Black Nurses Association; and Bering Omega Community Services.

HIV or AIDS; social security numbers; vehicle registration numbers; and credit card, debit card, charge card, and access device numbers. Therefore, any such information, including any such information you have highlighted in yellow in Exhibit 7, is not responsive to these requests. We also note that the information the city seeks to withhold under sections 552.136, 552.137, and 552.147 of the Government Code is not responsive to these requests, and thus we do not address information subject to sections 552.136, 552.137, and 552.147 in this ruling. This ruling does not address the public availability of the submitted information that is not responsive to the requests, and the city need not release that information.

Next, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from any of the third parties explaining how the release of the information at issue will affect their proprietary interests. Accordingly, we conclude that the city may not withhold any portion of the information at issue on the basis of any proprietary interest these third parties may have in it. *See, e.g.*, Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret).

We now address your arguments for the remaining submitted information. Section 552.101 of the Government Code exempts 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 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 "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); *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*

The city asserts that the information it has highlighted in Exhibit 7 identifies individual patients with AIDS and facilities and other business entities that receive HOPWA funds. As we noted earlier, the requestor specifically excludes the identities of individuals with AIDS or HIV from his requests. Thus, the information you have highlighted in Exhibit 7 which identifies these individuals is not responsive to the instant requests. We also note that the corresponding apartment unit numbers also identify these individuals, and thus are not responsive to this request. The responsive information you have highlighted in Exhibit 7 consists of the names of apartment complexes and other business entities that receive HOPWA funds. We note that our office has been provided with a letter written in September 2005 by Ms. Katie S. Worsham, Director with the U.S. Department of Housing and Urban Development ("HUD"), stating that the confidentiality provision of section 574.440 of chapter 42 of the United States Code only obligates HUD and grantees to keep names of clients confidential. The names of the apartment complexes and business entities at issue here do not identify the names of actual clients with AIDS who receive assistance. Accordingly, based on HUD's representation and our review of the information at issue, we conclude that none of the responsive information you have highlighted in Exhibit 7 is confidential under section 12905 of chapter 42 of the United States Code. Thus, none of the information at issue may be withheld on this basis.

We note that a portion of the submitted responsive information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Thus, the submitted responsive information must be released, but any copyrighted information may only be released in accordance with copyright law.

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 file suit in

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).

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

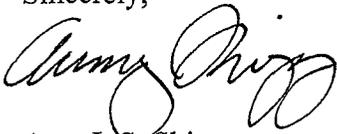
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/jb

Ref: ID# 313191

Enc. Submitted documents

c: Aids Activists in Action
P.O. Box 130453
Houston, Texas 77219-0453
(w/o enclosures)

Ms. Lynn Lohr
Chief Financial Officer
Bonita House of Hope
2605 Parker Road
Houston, Texas 77093
(w/o enclosures)

Ms. Shun C. Johnson
A Caring Safe Place, Inc.
1804 Carr Street
Houston, Texas 77026
(w/o enclosures)

Mr. Ronnie Silverman
Houston HELP, Inc.
5 Hanover Square, 17th Floor
New York, New York 10004
(w/o enclosures)

Ms. Lola Denise Jefferson
Fort Bend County Black Nurses Association
15426 Indian Wood
Missouri City, Texas 77489
(w/o enclosures)

Ms. Glenn Michelle Taggart
Bering Omega Community Services
1429 Hawthorne
Houston, Texas 77006
(w/o enclosures)