



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 5, 2010

Mr. Mario R. Gutierrez
General Counsel
Alamo Area Council of Governments
8700 Tesoro, Suite 700
San Antonio, Texas 78217

OR2010-06484

Dear Mr. Gutierrez:

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# 378724.

The Alamo Area Council of Governments (the "council") received a request for the names, addresses, phone numbers, and e-mail addresses of "landlords who house section 8 tenants." You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you have notified certain third parties of the request and of their right to submit arguments to this office as to why the submitted information should not be released. *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 the applicability of exception to disclose under Act in certain circumstances). One of the notified third parties has submitted comments. We have considered the raised exceptions and reviewed the submitted information.

Initially, we note an interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter,

only one of the notified third parties has submitted comments to this office explaining why the submitted information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate the remaining third parties' interests, and none of the information may be withheld on that basis. *See id.* § 552.110; 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).

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. This section encompasses information protected by other statutes. You appear to assert the submitted information is confidential in its entirety under section 552a of title 5 of the United States Code, also known as the federal Privacy Act. You assert "the information is collected pursuant to the requirements of [the U.S. Department of Housing and Urban Development] Section 8 program[.]" 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). However, we note that, for purposes of section 552a, "agency" means an agency, department, corporation, or other instrumentality of the federal government. *See id.* §§ 552a(1), 552(f)(1) (formerly section 552(e)); *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). Furthermore, neither the receipt of federal funds nor federal regulation convert state or local governmental bodies into agencies covered by the Act. *See St. Michael's Convalescent Hosp.*, 643 F. 2d at 1373-1374. Because the council is not a federal agency, it 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.

The interested third party asserts the submitted information is subject to the common-law right of privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. However, we note an individual's name, home address, and telephone number are generally not private information under common-law privacy. *See Open Records*

Decision Nos. 554 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Further, common-law privacy protects the interests of individuals, and not those of business and governmental entities. See Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); see also *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), rev'd on other grounds, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy). Upon review, we find no portion of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Therefore, we conclude no portion of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

We note portions of the submitted information are subject to section 552.137 of the Government Code.¹ Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail addresses we have marked do not appear to be of types specifically excluded by section 552.137(c) of the Government Code. Therefore, the council must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the council has received consent for their release.² As no further exception to disclosure has been raised, the remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

¹The 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).

²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/rl

Ref: ID# 378724

Enc. Submitted documents

c: Requestor
(w/o enclosures)