



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2010

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

OR2010-19023

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# 403322.

The Alamo Area Council of Governments (the "council") received a request for (1) a list of families or individuals who were approved for the Weatherization Assistance Program ("WAP") during a specified period and (2) for any final statements or bills submitted by contractors for payment under the WAP. You state, and provide documentation showing, the council sought clarification concerning the second part of the request, and the requestor subsequently narrowed the scope of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You have released information responsive to the narrowed second category to the requestor. You claim portions of the information responsive to the first part of the request are excepted from disclosure under section 552.101 of the Government Code. You have notified the Texas Department of Housing and Community Affairs of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information

should or should not be released). We have considered your arguments and reviewed the submitted representative sample of information.¹

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. This section encompasses information made confidential by other law. You raise section 552.101 of the Government Code in conjunction with section 600.153(f) of title 10 of the Code of Federal Regulations for portions of the submitted information.² Section 600.153(f) provides in relevant part:

(f) Unless required by statute, [the Department of Energy (the “DOE”)] shall place no restrictions on recipients [of grants] that limit public access to the records of recipients that are pertinent to an award, except when DOE can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to DOE.

10 C.F.R. § 600.153(f); *see also id.* § 600.101 (defining a “[r]ecipient” as an “organization receiving financial assistance directly from DOE to carry out a project or program”). We note section 600.153 is located in subpart B of part 600 of title 10. Section 600.100 sets forth the “Purpose” of subpart B, providing “[subpart B] establishes rules governing subawards to institutions of higher education, hospitals, and non-profit organizations (including grants and cooperative agreements *administered by State*, local and Indian Tribal governments).” *Id.* § 600.100 (emphasis added). You state the council provides weatherization services to property owners within its region, through contracts with weatherization contractors. You state the program is paid for with funds provided to the council by the DOE through the Texas Department of Housing and Community Affairs.

The DOE issued “Weatherization Program Notice 10-08” to provide guidance regarding privacy issues related to the WAP.³ *See* U.S. Dep’t of Energy, Weatherization Program Notice 10-08, Weatherization Guidance on Maintaining the Privacy of Recipients of Services (Feb. 1, 2010); *see also* 42 U.S.C. § 6863. According to the DOE, “[t]his guidance is provided to States or other entities named in the Notification of Grant Award as the

¹We 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.

²We note an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 476 (1987) (addressing statutory predecessor).

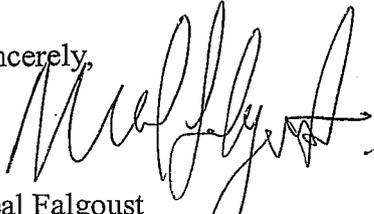
³We note this notice is available on the DOE’s website at: http://www1.eere.energy.gov/wip/pdfs/wpn_10-08_privacy.pdf.

recipients of financial assistance under the WAP[.]” See U.S. Dep’t of Energy, Weatherization Program Notice 10-08, Weatherization Guidance on Maintaining the Privacy of Recipients of Services (Feb. 1, 2010). The DOE states it derives legal authority to issue such guidance pursuant to Title IV, Energy Conservation and Production Act, which authorizes the DOE to administer the WAP. See Pub. L. No. 94-385, 90 Stat. 1125 (1976). The DOE quotes section 600.153(f) and states the DOE would be legally required to keep confidential “any specifically identifying information related to an individual’s eligibility application for WAP, or the individual’s participation in WAP, such as name, address, or income information.”⁴ See U.S. Dep’t of Energy, Weatherization Program Notice 10-08, Weatherization Guidance on Maintaining the Privacy of Recipients of Services (Feb. 1, 2010). Thus, the DOE concludes “states and local service providers should extend that same protection to their client records for WAP.” *Id.* You assert the names and home addresses of individuals participating in the WAP are confidential under section 600.153(f). Based on these representations and our review, we find the council must withhold the specifically identifying information of the WAP clients at issue, which includes names and home addresses under section 552.101 in conjunction with section 600.153(f) of title 10 of the Code of Federal Regulations.⁵

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 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

⁴See 5 U.S.C. § 552(b)(6) (excepting certain personal information from public disclosure under the Freedom of Information Act).

⁵As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 403322

Enc. Submitted documents

c: Requestor
(w/o enclosures)