



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 5, 2011

Ms. Molly Higgins Santos  
Assistant County Attorney  
County of Webb  
P.O. Box 420268  
Laredo, Texas 78042-0268

OR2010-00277

Dear Ms. Santos:

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# 405004.

Webb County (the "county") received two requests from the same requestor, one for a list of individuals approved for weatherization assistance during a specified time and one for the application for weatherization assistance of a specified person. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we must address the procedural obligations that section 552.301(b) of the Government Code places on a governmental body that is requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). While you raised section 552.101 for each of the requests within the ten-business-day time period as required by subsection 552.301(b), you did not raise section 552.108 until after the ten-business-day deadline had passed. Generally, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the waiver of its claims under the exceptions at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166

S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists when some other source of law makes the information confidential or when third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise section 552.108 of the Government Code, this section is discretionary. It serves to protect only a governmental body's interests, and may be waived; thus, it generally does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108-subject to waiver). However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision Nos. 586 (1991), 469 (1987). You inform us that the submitted information relates to a criminal investigation being conducted by the Texas Department of Housing and Urban Affairs. In addition, you assert that the information is excepted under section 552.101, which can also provide a compelling reason to withhold information. Therefore, we will consider your arguments under sections 552.101 and 552.108 against disclosure of the submitted information.

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 made confidential by other law, such as section 600.153(f) of title 10 of the Code of Federal Regulations.<sup>1</sup> This section 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"). 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.*

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<sup>1</sup> We note that 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).

§ 600.100. We understand that the county receives funding for the Weatherization Assistance Program (the “WAP”) from the DOE, which is administered through the Community Action Agency.

The DOE has issued “Weatherization Program Notice 10-08” to provide guidance regarding privacy issues related to the WAP.<sup>2</sup> 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 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.”<sup>3</sup> 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’s records for WAP.” *Id.* The county asserts the requested information, which identifies individuals participating in the WAP, is confidential under section 600.153(f). Based on the county’s representations and our review, we find the county must withhold the requested information under section 552.101 in conjunction with section 600.153(f) of title 10 of the Code of Federal Regulations.<sup>4</sup>

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](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

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<sup>2</sup> This notice is available on the DOE’s website at: [http://www1.eere.energy.gov/wip/pdfs/wpn\\_10-08\\_privacy.pdf](http://www1.eere.energy.gov/wip/pdfs/wpn_10-08_privacy.pdf).

<sup>3</sup> See 5 U.S.C. § 552(b)(6) (excepting certain personal information from public disclosure under the Freedom of Information Act).

<sup>4</sup> Because our ruling is dispositive, we do not address your remaining argument against disclosure.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

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MHB/eeg

Ref: ID# 405004

Enc. Submitted documents

c: Requestor  
(w/o enclosures)