



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 1, 2011

Mr. Jack Nichols
Houston Housing Authority
2640 Fountain View Drive
Houston, Texas 77057

OR2011-04485

Dear Mr. Nichols:

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# 413268.

The Houston Housing Authority (the "authority") received four requests from the same requestor for information related to 1) public housing applicants from January 1, 2000, to the date of the request, 2) public housing residents from January 1, 2000, to the date of the request, 3) reported fraud or program abuse from 2000 to the date of the request, 4) the authority's vendors and contractors from 2000, to the date of the request, and 5) the authority's funded housing from January 1, 2000, to the date of the request.¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹You state the authority received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²We assume that the "representative sample" of information 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.

Initially, we note the authority did not submit for our review information responsive to the portions of the request seeking information pertaining to reported fraud or program abuse, the authority's vendors and contractors, or the authority's funded housing. Although you state the authority submitted a representative sample of information, no portion of the submitted representative sample pertains to fraud or abuse, vendors and contractors, or the authority's funded housing. Thus, we find the submitted information is not representative of the information sought in these parts of the request. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this opinion does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See Gov't Code* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). To the extent information responsive to the remaining categories of requested information existed when the request was received, we assume you have released it. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301, .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).

Next, you inform us you have omitted information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the information is subject to a previous determination issued by this office or sections 552.024(c) and 552.147(b) of the Government Code. *See Gov't Code* § 552.301(a), (e)(1)(D). You state you have omitted dates of birth and annual salaries of public housing applicants and residents. You do not assert, nor does our review of the records indicate, you have been authorized to withhold any of the omitted information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). As such, the information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we are able to discern the nature of the omitted fungible information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the authority should refrain from omitting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the omitted information is public. *See Gov't Code* § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if the information

(1) contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. This office has found personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision No. 545 (1990) (mortgage payments, assets, bills, and credit history).

In Open Records Decision No. 373 (1983), this office determined financial information submitted by applicants for federally-funded housing rehabilitation loans and grants was "information deemed confidential" by a common-law right of privacy. The financial information at issue in Open Records Decision No. 373 included sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history. Additionally, in Open Records Decision No. 523 (1989), we held the credit reports, financial statements, and financial information included in loan files of individual veterans participating in the Veterans Land Program were excepted from disclosure by the common-law right of privacy. Similarly, we thus conclude financial information relating to a public housing resident or an applicant for housing assistance satisfies the first requirement of common-law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

The second requirement of the common-law privacy test requires the information not be of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 668. While the public generally has some interest in knowing whether public funds expended for housing assistance are being given to qualified applicants, we believe ordinarily this interest will not be sufficient to justify the invasion of the applicant's privacy that would result from disclosure of information concerning his or her financial status. *See* ORD 373 (although any record maintained by governmental body is arguably of legitimate public interest, if only relation of individual to governmental body is as applicant for housing rehabilitation grant, second requirement of common-law privacy test not met). In particular cases, a requestor may demonstrate the existence of a public interest that will overcome the second requirement of the common-law privacy test. However, whether there is a public interest in this information sufficient to justify its disclosure must be decided on a case-by-case basis. *See* ORDs 523, 373.

Open Records Decision Nos. 373 and 523 draw a distinction between the confidential "background financial information furnished to a public body about an individual" and "the basic facts regarding a particular financial transaction between the individual and the public body." Open Records Decision Nos. 523, 385 (1983). Subsequent decisions of this office analyze questions about the confidentiality of background financial information consistently with Open Records Decision No. 373. *See* Open Records Decision Nos. 600 (1992) (personal financial information not relating to the financial transaction between an individual

and a governmental body is protected), 545 (employee's participation in deferred compensation plan private), 523, 481 (1987) (individual financial information concerning applicant for public employment is closed), 480 (1987) (names of students receiving loans and amounts received from Texas Guaranteed Student Loan Corporation are public); *see also* Attorney General Opinions H-1070 (1977), H-15 (1973) (laws requiring financial disclosure by public officials and candidates for office do not invade their privacy rights). *But see* Open Records Decision Nos. 602 at 5 (1992) (records related to salaries of those employees for whom the city pays a portion are subject to the Act). We note, however, this office has concluded the names and present addresses of current or former residents of a public housing development are not protected from disclosure under the common-law right to privacy. *See* Open Records Decision No. 318 (1982). Likewise, the amounts paid by a housing authority on behalf of eligible tenants are not protected from disclosure under privacy interests. *See* Open Records Decision No. 268 (1981); *see also* Open Records Decision Nos. 600 at 9-10, 545, 489 (1987), 480.

Upon review, we find the annual salary information of public housing applicants and residents is highly intimate or embarrassing and not of legitimate public concern. Therefore, the authority must withhold the annual salary information of public housing applicants and residents under section 552.101 of the Government Code in conjunction with common-law privacy.

You inform us the remaining requested information includes dates of birth of public housing applicants and residents. You claim these dates of birth are excepted from disclosure under section 552.101 of the Government Code in conjunction with the ruling in *Texas Comptroller of Public Accounts v. Attorney General of Texas*. No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). In this case, the Texas Supreme Court held section 552.102(a) of the Government Code excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts.³ *Id.* Accordingly, the dates of birth of private individuals are not excepted from disclosure pursuant to *Texas Comptroller*. Thus, they may not be withheld under section 552.101 of the Government Code.

In summary, the authority must withhold the public housing applicant and resident annual salary information under section 552.101 of the Government Code in conjunction with common-law privacy. 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.

³Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

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,

A handwritten signature in cursive script, appearing to read "Jennifer Burnett".

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 413268

Enc. Submitted documents

c: Requestor
(w/o enclosures)