



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2012

Ms. Bonnie A. Hungerford
Scott Hulse, P.C.
P.O. Box 99123
El Paso, Texas 79999-9123

OR2012-01258

Dear Ms. Hungerford:

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# 443527.

Project Bravo ("Bravo"), which you represent, received a request for information pertaining to a specified address, a list of addresses and services performed since two named entities entered into contracts with Bravo, and a specified client confidentiality policy. You indicate Bravo will release some of the requested information to the requestor upon payment of charges. You claim 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 information. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor contends Bravo failed to comply with section 552.301 of the Government Code by failing to seek a ruling from this office within ten business days of receiving his original written request for information. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written

comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e)(1)(D). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision Nos. 319 (1982), 177 (1977). Regardless of whether Bravo failed to comply with section 552.301, because Bravo's claim under section 552.101 of the Government Code can provide a compelling reason to overcome this presumption, we will address the applicability of section 552.101 to 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.¹ 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.* § 600.100. You state Bravo receives funding for the Weatherization Assistance Program (the "WAP") from the DOE through the Texas Department of Housing and Community Affairs.

¹We 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).

The DOE has issued “Weatherization Program Notice 10-08” to provide guidance regarding privacy issues related to the WAP.² 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.”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). The DOE further states, “[t]he DOE must comply with all requirements on the [g]overnment to protect the privacy interests of individuals who participate in these financial assistance programs.” *Id.* Thus, the DOE concludes, “states and local service providers should extend that same protection to their client’s records for WAP.” *Id.* Bravo asserts the submitted information, which identifies individuals participating in the WAP, is confidential under section 600.153(f). Based on Bravo’s representations and our review, we find Bravo must generally withhold the specifically identifying information of the WAP clients at issue, including names, home addresses and telephone numbers, social security numbers, client identification numbers, account numbers, photographs of the individuals or their homes, and income information, under section 552.101 of the Government Code in conjunction with section 600.153(f) of title 10 of the Code of Federal Regulations.

As previously noted, however, the DOE has indicated section 600.153(f) is based on privacy principles. In this instance, the requestor is the son of the individual whose information is at issue in the submitted documents, and, in comments to this office, states he is the authorized representative of his mother. In this instance, because he is the authorized representative of the individual whose information is at issue, the requestor has a special right of access to information that would ordinarily be withheld to protect his mother’s common-law privacy interests. See *id.* § 552.023(a) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, as his mother’s authorized representative, the requestor has a right

²This notice is available on the DOE’s website at: http://www1.eere.energy.gov/wip/pdfs/wpn_10-08_privacy.pdf.

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

of access to her specifically identifying information, and that information may not be withheld from him under section 552.101 in conjunction with section 600.153(f) of title 10 of the Code of Federal Regulations. However, Bravo must withhold the specifically identifying information of other WAP clients, which we have marked, under section 552.101 of the Government Code in conjunction with section 600.153(f) of title 10 of the Code of Federal Regulations. Upon review, however, we find you have not demonstrated how any portion of the remaining submitted information consists of specifically identifying information of an individual participating in the WAP, and Bravo may not withhold any of the remaining information under section 552.101 in conjunction with section 600.153(f) of title 10 of the Code of Federal Regulations.

We note the remaining information includes information that is subject to section 552.130 of the Government Code.⁴ Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code* § 552.130. We note section 552.130 protects personal privacy. Accordingly, if the license plate number we have marked pertains either to a vehicle owned by the requestor or to a vehicle owned by the requestor's mother, then the requestor has a right of access to the marked motor vehicle record information under section 552.023 of the Government Code and it may not be withheld from him under section 552.130. *See id.* § 552.023(a); ORD 481 at 4. If the marked motor vehicle record information does not pertain to a vehicle owned by the requestor or his mother, then Bravo must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.⁵

In summary, Bravo must withhold the information we have marked under section 552.101 in conjunction with section 600.153(f) of title 10 of the Code of Federal Regulations. If the marked license plate number pertains neither to a vehicle owned by the requestor nor to a vehicle owned by the requestor's mother, then Bravo must withhold the license plate number we have marked under section 552.130 of the Government Code. 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

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas license plate number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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 black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 443527

Enc. Submitted documents

c: Requestor
(w/o enclosures)