



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 16, 2013

Ms. Melanie Barton  
Assistant District Attorney  
Dallas County  
411 Elm Street, 5<sup>th</sup> Floor  
Dallas, Texas 75202

OR2013-06167

Dear Ms. Barton:

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# 482769.

Dallas County Health and Human Services ("DCHHS") received a request for all fields of a database showing housing vouchers given in 2011 and 2012. 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 representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute. Gov't Code § 552.101. This section encompasses information other statutes make confidential. We understand you to claim the submitted information is protected by the Privacy Act of 1974, section 552a of title 5 of the

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<sup>1</sup>We 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.

United States Code (“Federal Privacy Act”).<sup>2</sup> Section 552a(b) of the Federal Privacy Act provides, “[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, our office and the courts have stated the Federal Privacy Act applies only to federal agencies, and not to state or local agencies. *See 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); Attorney General Opinion MW-95 at 2 (1979) (neither FOIA nor federal Privacy Act applies to records held by state or local governmental bodies in Texas) We understand you to assert in this instance that the Federal Privacy Act applies because of the federal housing assistance from the U.S. Department of Housing and Urban Development (“HUD”) that DCHHS provides to citizens of Dallas County through its Dallas County Housing Agency division. The courts have opined, however, that neither the receipt of federal funds nor limited oversight by a federal entity convert state or local governmental bodies into agencies covered by the Privacy Act. *See St. Michael’s Convalescent Hosp.*, 643 F.2d at 1373-74; *see also United States v. Orleans*, 425 U.S. 807, 816, 96 S.Ct. 1971, 1976, 48 L.Ed.2d 390 (1976) (federal regulations and contract provisions do not convert acts of local and state governmental bodies into federal governmental acts.). Additionally, you provided copies of a “Federal Privacy Act Statement” and an “Authorization for Release of Information,” which you state recipients of housing assistance must sign. You further state that by signing these forms, DCHHS ensures participants that their “personally identifiable information will only be released to the appropriate [f]ederal, [s]tate, and local agencies.” However, we note the “Federal Privacy Act Statement” you submitted provides that the “Privacy Act restricts HUD’s disclosure of information on individuals and families but does not restrict the [public housing agency] from releasing such information.” It further provides that “[t]here may be state and local laws or regulations that

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<sup>2</sup>In your initial briefing to this office, you claimed the submitted information was excepted from disclosure pursuant to guidance DCHHS received from the U.S. Department of Housing and Urban Development in Notice PIH 2010-15(HA) (the “notice”). This notice primarily provides information regarding the protection of personally identifiable information in compliance with the Federal Privacy Act, but also lists other statutes and regulations. Pursuant to section 552.303 of the Government Code, we asked you to provide additional arguments explaining how each of the federal statutes and regulations you highlighted in the notice apply to make the submitted information confidential. *See Gov’t Code § 552.303(c)-(d)* (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). In your response, you again cited to the notice, but did not, as requested, specifically address any particular statute or regulation as set forth in the notice. Thus, based on the substance of your arguments and submitted documentation, we understand you to only argue the applicability of the Federal Privacy Act. Accordingly, we assume you do not assert the applicability of any of the remaining statutes and regulations to the submitted information, and this ruling does not address any such statutes and regulations. *See Gov’t Code §§ 552.301, .302.*

govern disclosure by the public housing agency.” Therefore, we find you have failed to demonstrate the Federal Privacy Act applies to the information at issue, and you may not withhold any of it under section 552.101 of the Government Code on that basis.

You also claim the submitted information is excepted from disclosure under section 552.101 of the Government Code based on guidance DCHHS received from the U.S. Department of Agriculture in its “Incident Notification Plan.” This document provides information on protecting personally identifiable information and responding to data breaches. You state this document demonstrates the importance the federal government places on protecting sensitive information. However, you have not directed our attention to any law contained in the “Incident Notification Plan” that would make the submitted information confidential for the purposes of section 552.101. Accordingly, we conclude DCHHS may not withhold any portion of the submitted information under section 552.101 of the Government Code on the basis of the “Incident Notification Plan.”

Section 552.101 of the Government Code also encompasses the Violence Against Women Act (“VAWA”), which is codified under section 13925 through section 14045d of title 42 of the United States Code. Section 13925(b)(2) provides, in part:

(2) Nondisclosure of confidential or private information

(A) In general

In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families, grantees and subgrantees under this title shall protect the confidentiality and privacy of persons receiving services.

(B) Nondisclosure

Subject to subparagraphs (C) and (D), grantees and subgrantees shall not—

(i) disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees’ and subgrantees’ programs; or

(ii) reveal individual client information without the informed, written, reasonably time-limited consent of the person . . . about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent

for release may not be given by the abuser of the minor, person with disabilities, or the abuser of the other parent of the minor.

42 U.S.C. § 13925(b)(2)(A), (B). Section 13925(a)(18) states:

(18) Personally identifying or personal information

The term “personally identifying information” or “personal information” means individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including —

(A) a first and last name;

(B) home or other physical address;

(C) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);

(D) a social security number; and

(E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any of subparagraphs (A) through (D), would serve to identify any individual.

*See id.* § 13925(a)(18). You do not inform us whether DCHHS receives grants under VAWA to provide housing assistance to families who are the victims of domestic violence nor whether any of the submitted information pertains to families DCHHS serves with the aid of such grants. *See id.* § 13925; *see also* 42 U.S.C. § 14043e-4(b) (authorizing grants to promote access to and use of public and assisted housing by victims of domestic violence, dating violence, sexual assault, and stalking). Thus, we find you have failed to demonstrate that any of the submitted information includes the personally identifying information of individuals collected in connection with DCHHS’s rendition of housing assistance funded by VAWA. Therefore, we conclude no portion of the submitted information is confidential under section 13925(b)(2) of title 42 of the United States Code and DCHHS may not withhold any of the submitted information pursuant to section 552.101 of the Government Code on that basis.

determined “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this new standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned “vague assertions of risk will not carry the day.” *Id.* at 119.

You state that some of the submitted information may pertain to housing assistance participants who are victims of domestic violence and under protective court order. You further state release of “this information would place program participants and their children at risk of being traced of their whereabouts.” You also state some participants “may be involved in legal proceedings such as divorce and may have temporary restraining orders.” We note the submitted information lists the participants’ names, social security numbers, and administrative information regarding their vouchers, but does not list addresses or telephone numbers or any other information regarding the participants’ locations. Accordingly, we find you have not sufficiently demonstrated that a substantial risk of physical harm to the participants would result from disclosure of any of the submitted information. Thus, DCHHS may not withhold any of the submitted information under section 552.101 on the basis of the common-law physical safety exception.

Finally, you assert that the release of the submitted information could result in claims of discrimination on the basis of race, age, and other protected classes. We note, however, that the Act does not permit a governmental body or this office to consider a requestor’s use of information. *See id.* § 552.222(a) (stating governmental body may not inquire into purpose for which information will be used); *see also* Open Records Decision Nos. 508 at 3 (1988) (use that may be made of information does not control whether it falls within exception to disclosure), 51 (1974). Further, section 552.204 of the Government Code provides that a governmental body is not responsible for the use that may be made of information released to the public under the Act. *See Gov’t Code* § 552.204(a). A governmental body must release the information to which a requestor seeks access unless the information falls within the scope of an exception to public disclosure under the Act. *See Gov’t Code* § 552.221. Therefore, as you have cited no further exceptions to disclosure, the submitted information must be released.<sup>6</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),

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<sup>6</sup>We note the information being released contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to withhold a living person’s social security number without the necessity of requesting a decision from this office. *See Gov’t Code* § 552.147(b).

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 "Kristi L. Wilkins".

Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/bhf

Ref: ID# 482769

Enc. Submitted documents

c: Requestor  
(w/o enclosures)