



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2013

Mr. Warren M.S. Ernst
Chief of the General Counsel Division
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2013-07193

Dear Mr. Ernst:

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# 485819.

The City of Dallas Fair Housing Office (the "city") received a request for the number of complaints from disabled residents in regards to their pets since 2010 and information pertaining to fines levied by the city in regards to fair housing law violations since 2008. You state the city will release some information to the requestor. You claim the remaining requested 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.¹

Initially, we address your argument section 20A-10(g) of the Dallas City Code prohibits the release of a conciliation agreement when the aggrieved person and the respondent request nondisclosure of such agreement. 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. We note a governmental body may not

¹We assume 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 those records contain substantially different types of information than those submitted to this office.

promulgate a rule that designates information as being confidential, so as to bring the information within the scope of section 552.101, unless the governmental body has been given specific statutory authority to do so. *See* Open Records Decision Nos. 594 at 2-3 (1991) (city ordinance cannot operate to make information confidential when not excepted by Act), 263 (1981) (city ordinance may not conflict with Act); *see also Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976) (agency rule may not make information confidential in circumvention of Act). You have not directed our attention to any law, nor are we aware of any, that authorizes the city to make information confidential for purposes of the Act. Consequently, we conclude the city may not withhold any portion of the submitted information under section 552.101 of the Government Code on the basis of section 20A-10(g) of the Dallas City Code.

Section 552.101 of the Government Code encompasses information protected by federal and state law. You assert the submitted information is confidential under section 103.330 of title 24 of the Code of Federal Regulations and section 301.085 of the Property Code. *See* 24 C.F.R. § 103.330; Prop. Code § 301.085. Part 103 applies to complaints alleging discriminatory housing practices because of race, color, religion, sex or national origin, and complaints alleging discriminatory housing practices on account of handicap or familial status occurring on or after March 12, 1989. 24 C.F.R. § 103.1(b). Upon the filing of a complaint, both federal and state law mirror each other in language and encourage conciliation to the extent feasible. Section 103.330(b) provides the following:

(b) Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the Assistant Secretary determines that disclosure is not required to further the purposes of the Fair Housing Act. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the Assistant Secretary may publish tabulated descriptions of the results of all conciliation efforts.

Id. § 103.330(b); *see id.* § 103.9 (defining conciliation for purposes of part 103). Section 301.085 of the Property Code provides in pertinent part:

(d) A conciliation agreement is public information unless:

- (1) the complainant and respondent agree that it is not; and
- (2) the commission determines that disclosure is not necessary to further the purposes of this chapter.

Prop. Code § 301.085(d). You contend the submitted information is excepted pursuant to section 103.330(b) of title 24 of the Code of Federal Regulations and section 301.085(d) of the Property Code. You state the parties to the agreement have requested nondisclosure. Additionally, you inform us the city's administrator has determined that a public purpose

would not be furthered by disclosure. Accordingly, we find the city must withhold the submitted conciliation agreement, which we have marked, under section 552.101 of the Government Code in conjunction with federal law.² Although you contend the remaining information is also protected under the federal law and state law, this information does not consist of a conciliation agreement. Accordingly, we find the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 103.330 of title 24 of the Code of Federal Regulations or section 301.085(d) of the Property Code.

Section 552.101 of the Government Code also encompasses section 154.073 of the Civil Practice and Remedies Code, which provides in part:

(a) Except as provided by Subsections (c), (d), (e), and (f), a communication relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

Civ. Prac. & Rem. Code § 154.073(a). You contend the remaining information is excepted pursuant to section 154.073(a) of the Civil Practices and Remedies Code. However, you have not demonstrated this information consists of a communication relating to the subject matter of the dispute made by a participant in an alternative dispute resolution procedure or a record made at such a procedure. Thus, the remaining information is not confidential under section 154.073 of the of the Civil Practice and Remedies Code, and may not be withheld under section 552.101 of the Government Code on that ground.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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 not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the city must withhold the marked information under

²As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the city must withhold the agreement we have marked under section 552.101 of the Government Code in conjunction with federal law. The city must also withhold the information we have marked 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.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 485819

Enc. Submitted documents

c: Requestor
(w/o enclosures)