



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2013

Ms. Donna L. Johnson
Counsel for the City of Clear Lake Shores
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2013-16350

Dear Ms. Johnson:

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#502148 (Ref. No. CLS13-001).

The City of Clear Lake Shores (the "city"), which you represent, received a request for all of the R.S.D.E., damage letters, and property damage reports sent by the city to any agency or any other entity. You state the city has released some of the requested information. 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.¹ We have also received and considered comments from the requestor and the Federal Emergency Management Agency ("FEMA"). *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 552a of title 5 of the United States Code, also known as the Federal Privacy Act. We note that this office has

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 that submitted to this office.

stated in numerous opinions that information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure merely because the same information is or would be confidential in the hands of a federal agency. *See, e.g.*, Attorney General Opinion MW-95 (1979) (concluding that neither the federal Freedom of Information Act nor the federal Privacy Act applies to records held by state or local governmental bodies in Texas). However, this office has also held that section 552.101 requires a local governmental entity that has obtained information from a federal agency to respect confidentiality imposed on the information by federal law. *See* Open Records Decision No. 561 (1990).

The Privacy Act provides in part “[n]o [federal] 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, unless disclosure would be” allowed by one of twelve enumerated exceptions. 5 U.S.C. § 552a(b).

You state the submitted information was compiled by FEMA and pertains to the provision of emergency federal assistance. You explain the submitted information was provided to the city to assist in providing disaster assistance to displaced residents impacted by Hurricane Ike. FEMA informs us it shares this information with the city but does not disclose it publicly. FEMA asserts the submitted information, which contains personally identifiable information of individuals who applied for and/or received FEMA assistance, is protected by the Privacy Act. You further state the city “has an affirmative duty not to disclose this information and to assert those arguments established by the Privacy Act in the same manner as FEMA.” We, therefore, find the submitted information is confidential pursuant to the Privacy Act. Release of the submitted information in response to the present request would not be a release in accordance with the exceptions to the Privacy Act. Therefore, the submitted information must be withheld under section 552.101 of the Government Code in conjunction with federal law.²

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/dls

Ref: ID# 502148

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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