



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2013

Mr. Jim Ewbank
Counsel for the Housing Authority of the City of Austin
Ewbank & Harris, P.C.
1210 Nueces Street
Austin, Texas 78701

OR2013-18043

Dear Mr. Ewbank:

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# 502576.

The Housing Authority of the City of Austin (the "authority") received a request for 1) the number of individuals currently on the waiting list to receive Housing Choice Voucher/Section 8 assistance; 2) the number of individuals currently receiving such assistance, 3) the average wait time on the list to receive assistance; 4) the length of time individuals currently receiving assistance are allowed to receive such assistance; 5) a list of all individuals currently receiving assistance, including full name, date of birth, address, date assistance began, amount of assistance received, landlord, and landlord's address; 6) a list of individuals currently on the waiting list to receive assistance, including full name, date of birth, address, date entered on waiting list, and amount of assistance requested; and 7) a list of landlords participating in the program, including full name, address of landlord, address of property receiving assistance, and date address entered in the program. You state the authority has provided most of the requested information to the requestor. 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.¹

¹We 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.

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. You claim the information at issue is protected by the Privacy Act of 1974, section 552a of title 5 of the United States Code (“Federal Privacy Act”), pursuant to guidance the authority received from the U.S. Department of Housing and Urban Development in Notice PIH 2010-15(HA). 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). The courts have also opined 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 (1976) (federal regulations and contract provisions do not convert acts of local and state governmental bodies into federal governmental acts.). Upon review of your arguments, 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.

Section 552.101 of the Government Code also encompasses section 13925 of title 42 of the United States Code, which is part of the Violence Against Women Act (“VAWA”). 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 subchapter 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, reveal, or release any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected; or

(ii) disclose, reveal, or release 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, incapacitated person, or the abuser of the other parent of the minor.

If a minor or a person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may release information without additional consent.

42 U.S.C. § 13925(b)(2)(A), (B). Section 13925(a)(20) states:

(20) Personally identifying information 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, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including —

(A) a first and last name;

(B) a 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, driver license number, passport number, or student identification number; and

(E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify any individual.

See id. § 13925(a)(20). You state the authority receives grants under VAWA to provide housing assistance to families who are the victims of domestic violence. *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). You inform us that a portion of the responsive information pertains to the families the authority serves with the aid of such grants. You contend the personally identifying information of such individuals is confidential under section 13925(b)(2) of title 42 of the United States Code. You state the authority has not received consent to release any information from any person about whom information is sought pursuant to section 13925(b)(2)(B)(ii). Based on your representations and our review, we find the submitted information includes the personally identifying information of individuals collected in connection with the authority's rendition of housing assistance funded by VAWA. Thus, the authority must withhold this information pursuant to section 552.101 of the Government Code in conjunction with section 13925(b)(2) of title 42 of the United States Code. However, the authority may not withhold the personally identifying information of individuals that has not been collected in connection with the authority's rendition of housing assistance funded by VAWA under section 552.101 on that basis.

You raise section 552.101 of the Government Code in conjunction with the ruling in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010), for the remaining birth dates. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. In *Texas Comptroller*, 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. 354 S.W.3d at 336. Accordingly, *Texas Comptroller* applies only to a public employee's birth date maintained by the employer in an employment context. In this instance, the birth dates at issue are not held by the authority in an employment context. Therefore, we conclude the authority may not withhold the birth dates in the remaining information under section 552.101 of the Government Code on the basis of the ruling in *Texas Comptroller*.

In summary, the authority must withhold the personally identifying information of individuals that is collected in connection with the authority's rendition of housing assistance funded by VAWA pursuant to section 552.101 of the Government Code in conjunction with section 13925(b)(2) of title 42 of the United States Code. The authority must release the remaining information.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Kristi L. Wilkins". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 502576

Enc. Submitted documents

c: Requestor
(w/o enclosures)