



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2014

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla Street - Room 7DN
Dallas, Texas 75201

OR2014-04342

Dear Ms. Silver:

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# 516740.

The City of Dallas (the "city") received a request for information pertaining to the participation of a named individual and a named apartment complex in Project Reconnect, as well as other enrollees in Project Reconnect who resided at the named apartment complex during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

We note a portion of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

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.

...

(3) information in an account, voucher, or contract, relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). Portions of the submitted information consist of information in a contract relating to the expenditure of public funds. We find this information, which we have marked, is subject to section 552.022(a)(3). Although you seek to withhold this information under section 552.108 of the Government Code, this section is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the information we have marked may not be withheld under section 552.108. You also claim section 552.101, which makes information confidential under the Act, for the information subject to section 552.022(a)(3). Accordingly, we will address the applicability of section 552.101 to the information at issue and consider all of your arguments for the information not subject to section 552.022.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal prosecution. You further state release of the submitted information would interfere with prosecution, and the Dallas Police Department and the Dallas County District Attorney's Office request the information be protected at this time. Based on your representation and our review, we conclude the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the city may withhold the information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.²

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

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

Code § 552.101. Section 552.101 encompasses information made confidential by other statutes. You state the identities of individuals assisted through Housing Opportunities for Persons with AIDS (“HOPWA”) are confidential. The stated purpose of HOPWA is “to provide States and localities with the resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome and families of such persons.” 42 U.S.C. § 12901. Section 12905(e) of title 42 of the United States Code requires the city to “ensure the confidentiality of the name of any individual assisted with amounts from a grant under this chapter and any other information regarding individuals receiving such assistance.” *Id.* § 12905(e); *see also* 24 C.F.R. § 574.440. We believe the intent of this confidentiality provision is to keep confidential information that would tend to identify individual patients with AIDS and thereby prevent housing discrimination against such individuals.³

You state some of the participants in Project Reconnect are recipients of HOPWA funds. We note the information at issue includes, among other items, the name and apartment number of an individual client as well as the name and address of the apartment complex in which the individual resides. We further note our office has been provided with a letter written in September 2005 by Ms. Katie S. Worsham, Director with the United States Department of Housing and Urban Development (“HUD”), stating the confidentiality provision of section 574.440 of title 24 of the Code of Federal Regulations only obligates HUD and grantees to keep names of clients confidential. The name and address of the apartment complex at issue here do not identify the name of an actual client with AIDS who receives assistance. Accordingly, based on HUD’s representation and our review of the information at issue, we conclude only the individual’s name and apartment number are confidential under section 12905 of title 42 of the United States Code; thus, the city must withhold the information we have marked under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Furthermore, this office has concluded the names and present addresses of current or former residents of a public housing

³*See generally* *Housing Needs of Persons With Acquired Immune Deficiency Syndrome (AIDS): Hearings before the Subcomm. on Housing and Community Development of the House Banking, Finance, and Urban Affairs Comm.*, 101st Cong. (1990) (hearing devoted to housing problems of persons with AIDS, their causes, such as discrimination, and their remedies); *see also* *National Housing Policy Conference and Public Hearing: Hearings before the Subcomm. on Housing and Urban Affairs, Senate Banking, Housing, and Urban Affairs Comm. and the Subcomm. on Housing and Community Development, House Banking, Finance, and Urban Affairs Comm.*, 100th Cong. p. 154 (1988).

development are not protected from disclosure under the common-law right to privacy. *See* Open Records Decision No. 318 (1982). Likewise, the amounts paid by a housing authority on behalf of eligible tenants are not protected from disclosure under privacy interests. *See* Open Records Decision No. 268 (1981); *see also* Open Records Decision Nos. 600 at 9-10 (1992), 545 (1990), 489 (1987), 480 (1987). Upon review, we find you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city may withhold the information not subject to section 552.022 under section 552.108(a)(1) of the Government Code. The city must withhold the name and apartment number we have marked under section 552.101 in conjunction with section 12905 of title 42 of the United States Code. The city 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/tch

Ref: ID# 516740

Enc. Submitted documents

c: Requestor
(w/o enclosures)