



January 27, 2015

Mr. Benjamin V. Lugg
Attorney
San Antonio Housing Authority
818 South Flores Street
San Antonio, Texas 78204

OR2015-01577

Dear Mr. Lugg:

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# 551481.

The San Antonio Housing Authority (the "authority") received a request for eight categories of information relating to a named employee of the authority, a specified request for proposals, the employee in charge of investigating and handing complaints against Orion Real Estate Services, and information pertaining to tenants who were evicted from a specified apartment complex during a specified time period. The authority states it sent the requestor a cost estimate with respect to some of the requested information. The authority claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the authority claims and reviewed the submitted representative sample of information.¹

Initially, we note the requestor only requested the names and addresses of tenants who were evicted at the specified apartment complex. Accordingly, the remaining information pertaining to the tenants who were evicted and the information pertaining to tenants who

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.

were not evicted is not responsive to the present request. This ruling does not address the public availability of non-responsive information, and the authority is not required to release non-responsive information in response to this request.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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. This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992).

In Open Records Decision No. 373 (1983), this office determined financial information submitted by applicants for federally-funded housing rehabilitation loans and grants was "information deemed confidential" by a common-law right of privacy. The financial information at issue in Open Records Decision No. 373 included sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history. Additionally, in Open Records Decision No. 523 (1989), we held the credit reports, financial statements, and financial information included in loan files of individual veterans participating in the Veterans Land Program were excepted from disclosure by the common-law right of privacy. Similarly, we thus conclude financial information relating to an applicant for housing assistance satisfies the first requirement of common-law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

The second requirement of the common-law privacy test requires the information not be of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 668. While the public generally has some interest in knowing whether public funds expended for housing assistance are being given to qualified applicants, we believe ordinarily this interest will not be sufficient to justify the invasion of the applicant's privacy that would result from disclosure of information concerning his or her financial status. *See* ORD 373 (although any record maintained by governmental body is arguably of legitimate public interest, if only relation of individual to governmental body is as applicant for housing rehabilitation grant, second requirement of common-law privacy test not met). In particular cases, a requestor may demonstrate the existence of a public interest that will overcome the second requirement of the common-law privacy test. However, whether there is a public interest in this information

sufficient to justify its disclosure must be decided on a case-by-case basis. *See* ORDs 523, 373.

Open Records Decision Nos. 373 and 523 draw a distinction between the confidential “background financial information furnished to a public body about an individual” and “the basic facts regarding a particular financial transaction between the individual and the public body.” Open Records Decision Nos. 523, 385 (1983). Subsequent decisions of this office analyze questions about the confidentiality of background financial information consistently with Open Records Decision No. 373. *See* Open Records Decision Nos. 600, 545 (1990), 523, 481 (1987) (individual financial information concerning applicant for public employment is closed), 480 (1987) (names of students receiving loans and amounts received from Texas Guaranteed Student Loan Corporation are public); *see also* Attorney General Opinions H-1070 (1977), H-15 (1973) (laws requiring financial disclosure by public officials and candidates for office do not invade their privacy rights). *But see* Open Records Decision No. 602 at 5 (1992) (records related to salaries of those employees for whom the city pays a portion are subject to the Act). We note, however, this office has concluded the names and present addresses of current or former residents of a public housing 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, 545, 489 (1987), 480. Whether the public has a legitimate interest in an individual’s sources of income must be determined on a case-by-case basis. *See* ORD 373 at 4; *see also* ORDs 600, 545.

Upon review, we find the authority has failed to demonstrate any of the submitted responsive information is highly intimate or embarrassing and of no legitimate public interest. Thus, the authority may not withhold any of the submitted responsive information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy, which consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the authority has failed to demonstrate any of the submitted responsive information falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, the authority may not withhold any of the submitted

responsive information under section 552.101 on the basis of constitutional privacy. As the authority raises no other exceptions to disclosure, it must release the responsive 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 551481

Enc. Submitted documents

c: Requestor
(w/o enclosures)