



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 13, 2016

Mr. Benjamin V. Lugg
Attorney
San Antonio Housing Authority
P.O. Box 1300
San Antonio, Texas 78295-1300

OR2016-01007

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# 593916.

The San Antonio Housing Authority (the "authority") received a request for the following categories of information pertaining to any complaints against the requestor: (1) name of complainant, (2) current address of complainant, (3) date of complaint, and (4) copy of complaint. You state you have released some information to the requestor. 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 information.

Initially, we note the requestor only requested the four specified categories of information pertaining to any complaints against the requestor. Thus, any additional information you have submitted beyond the four specified categories of information is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the authority is not required to release that information in response to the request.

The authority asserts the responsive information is protected by section 552(b)(4) of title 5 of the United States Code, the Freedom of Information Act ("FOIA"). We note FOIA is applicable to information held by an agency of the federal government. In this instance, the information at issue is held by a Texas agency, which is subject to the laws of the State of

Texas. See Attorney General Opinion MW-95 (1979) (FOIA exceptions apply to federal agencies, not to state agencies); Open Records Decision Nos. 496 (1988), 124 (1976); see also *Davidson v. Georgia*, 622 F.2d 895, 897 (5th Cir. 1980) (state governments are not subject to FOIA); Open Records Decision No. 561 at 7 n.3 (1990) (noting federal authorities may apply confidentiality principles found in FOIA differently from way in which such principles are applied under Texas open records law). This office has 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 (neither FOIA nor federal Privacy Act of 1974 applies to records held by state or local governmental bodies in Texas); ORD 124 (fact that information held by federal agency is excepted by FOIA does not necessarily mean that same information is excepted under Act when held by Texas governmental body). Thus, the authority may not withhold any of the information on the basis of FOIA.

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 responsive information, and you may not withhold any of it under section 552.101 of the Government Code on that basis.

We also understand you to raise section 552.101 of the Government Code in conjunction with the Federal Information Security Modernization Act of 2014 (“FISMA”). You quote language found in section 3554, which provides, in part:

- (a) . . . The head of each agency shall –
 - (1) be responsible for –
 - (A) providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of–
 - (i) information collected or maintained by or on behalf of the agency; and
 - (ii) information systems used or operated by an agency or by a contractor of an agency or other organization or on behalf of an agency[.]

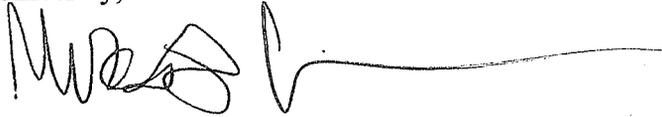
Federal Information Security Management Act of 2014, Pub. L. No. 113-283, § 3554, 128 Stat. 3073, 3078 (2014). You generally assert the responsive information is protected by FISMA. You state the records the authority has collected and maintained on behalf of the United States Department of Housing and Urban Development are subject to security protections and controls developed and/or adopted pursuant to the authority of FISMA. However, we note section 3554 does not make information confidential for purposes of the Act. Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Furthermore, you have not directed this office to any other specific provision of FISMA, and we are not aware of any provision, that makes the responsive information confidential under section 552.101. Therefore, none of the responsive information is confidential under FISMA, and the authority may not withhold any of the information at issue under section 552.101 of the Government Code on this ground. As you raise no further exceptions against disclosure, the authority 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,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', followed by a long horizontal line extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 593916

Enc. Submitted documents

c: Requestor
(w/o enclosures)