



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2015

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

OR2015-07041

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# 559649.

The San Antonio Housing Authority (the "authority") received a request for the rent approval or voucher amount for a named individual and the "RTA Packet[.]"¹ You claim the requested 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 authority did not submit the requested RTA Packet. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this portion of the request exists, we assume the authority has released such information to the requestor. If the authority has not released any such information, it must do so at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).*

Next, we note only the rent approval or voucher amount is responsive to the instant request. The remaining information is not responsive to the request because it does not consist of the

¹We note an RTA packet is a Request for Tenancy Approval, form HUD-52517.

requested information. 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 such information in response to this request.

This section encompasses information other statutes make confidential. The authority raises the Privacy Act of 1974, section 552a of title 5 of the United States Code ("Federal Privacy Act"). However, the Federal Privacy Act applies only to a federal agency. *See* 5 U.S.C. §§ 552(f), 552a(a). State and local government agencies are not covered by the Federal Privacy Act. *See Davidson v. Georgia*, 622 F.2d 895, 896 (5th Cir. 1980); *see also* Attorney General Opinion MW-95 (1979). Because the authority is not a federal agency, it is not bound by the Federal Privacy Act's confidentiality provisions, as would be a federal agency. *See* 5 U.S.C. §§ 552a(a)(1), 552(f) (defining "agency" for purposes of Federal Privacy Act). Therefore, the authority may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the Federal Privacy Act.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is 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 found personal financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision No. 545 (1990) (mortgage payments, assets, bills, and credit history).

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. Similarly, we thus conclude financial information relating to a public housing resident or 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 Open Records Decision Nos. 523 (1989), 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 (1992) (personal financial information not relating to the financial transaction between an individual and governmental body is protected), 545 (employee's participation in deferred compensation plan private), 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 portion are subject to 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.

Upon review, we find the authority has failed to demonstrate the responsive information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the rent approval or voucher amount is not confidential under common-law privacy, and the authority may not withhold it under section 552.101 of the Government Code on that ground. The remaining submitted information is not responsive to the request, and the authority need not release it.

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 'Cindy Nettles', with a stylized flourish at the end.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 559649

Enc. Submitted documents

c: Requestor
(w/o enclosures)