



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2015

Mr. Zachary Noblitt
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2015-08547

Dear Mr. Noblitt:

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# 562195.

The City of Dallas (the "city") received a request for a specified Fair Housing complaint and any associated materials.¹ You state the city will release some responsive information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the

¹You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

exceptions you claim and reviewed the submitted information, some of which consists of a representative sample of information.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.” *Id.* § 552.101. Section 552.101 encompasses information protected by federal and state law. You assert the submitted information in Exhibit C is confidential under section 3610 of title 42 of the United States Code, which provides, in pertinent part:

(d) Prohibitions and requirements with respect to disclosure of information

(1) Nothing said or done in the course of conciliation under this subchapter may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned.

42 U.S.C. § 3610(d)(1). You state the information at issue consists of statements made or actions taken in the course of conciliation in relation to a fair housing complaint. You assert neither party has consented to the release of the information at issue. Upon review, we find the information we marked in Exhibit C consists of statements made or actions taken in the course of conciliation. Therefore, the city must withhold the marked information in Exhibit C under section 552.101 of the Government Code in conjunction with federal law.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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 not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefit programs, among others, protected under common-law privacy.).

²We 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 that those records contain substantially different types of information than that submitted to this office.

Upon review, we find the city has failed to demonstrate the information you have marked, which relates to the specified Fair Housing complaint, is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city may not withhold the marked information in Exhibit D under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, the city must withhold the information we have marked under section 552.136 of the Government Code. The city has failed to demonstrate, however, the remaining information you have marked is confidential under section 552.136 of the Government Code; consequently, the city may not withhold the remaining marked information on that basis.

The city claims Exhibit E contains e-mail addresses subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 is not applicable to an e-mail address maintained by a governmental entity for one of its officials or employees. *See id.* § 552.137(c). We agree the e-mail addresses you have marked are not excluded by subsection (c). You state the owners of the e-mail addresses at issue have not consented to release. Therefore, the city must withhold the personal e-mail addresses you have marked in Exhibit E under section 552.137 of the Government Code.

In summary, the city must withhold the marked information in Exhibit C under section 552.101 of the Government Code in conjunction with federal law. The city must withhold the information we have marked under section 552.136 of the Government Code. The city must withhold the personal e-mail addresses you have marked in Exhibit E under section 552.137 of the Government 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,

A handwritten signature in black ink, appearing to read "Cindy Nettles", written in a cursive style.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 562195

Enc. Submitted documents

c: Requestor
(w/o enclosures)