



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2015

Mr. Marty Byers
Finance Director
N.E.T. Opportunities, Inc.
P.O. Box 478
Mt. Vernon, Texas 75457

OR2015-16454

Dear Mr. Byers:

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# 574701.

N.E.T. Opportunities, Inc. ("NETO") received two identical requests from different requestors for the following information for Franklin and Hopkins counties: (1) the names, addresses, and phone numbers of all individuals to whom NETO delivers meals; (2) how many days a week each person is delivered meals; and (3) the names, addresses, and phone numbers of all individuals to whom NETO provides utility payment assistance. 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 representative sample of information.¹

Initially, we note the requestors seek only the names, addresses, and phone numbers of all individuals to whom NETO delivers meals and how many days a week each person is delivered meals, and the names, addresses, and phone numbers of all individuals to whom NETO provides utility payment assistance. You have submitted information beyond these

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.

categories of information. Accordingly, the remaining submitted information is not responsive to the instant requests. This ruling does not address the public availability of non-responsive information, and NETO need not release non-responsive information in response to the present requests.

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 Code § 552.101. This section encompasses information protected by other statutes, such as section 12.003 of the Human Resources Code. Section 12.003 of the Human Resources Code provides, in relevant part:

(a) Except for purposes directly connected with the administration of the assistance programs of the [Texas Health and Human Services Commission (the “commission”)]² or Department of Aging and Disability Services [(the “department”)], as applicable, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the commission or department or acquired by employees of the commission or department in the performance of their official duties.

Hum. Res. Code § 12.003(a) (footnote added). The term “assistance” in section 12.003 includes “all forms of assistance and services for needy persons authorized by Subtitle C” of title 2 of the Human Resources Code. *Id.* § 11.001(1); *see also id.* §§ 31.001 *et seq.* (Assistance Programs). In Open Records Decision No. 584 (1991), this office concluded that “[t]he inclusion of the words ‘or any information’ juxtaposed with the prohibition on disclosure of the names of the [commission]’s clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients’ names and addresses.” ORD 584 at 3. Consequently, it is the specific information pertaining to individual clients, and not merely the clients’ identities, that is made confidential under section 12.003. *See also* 42 U.S.C. § 1396a(a)(7) (state plan for medical assistance must provide safeguards that restrict use or disclosure of information concerning applicants and recipients to purposes directly connected with administration of plan); 42 C.F.R. § 431.300 *et seq.*; Hum. Res. Code § 21.012(a); Open Records Decision No. 166 (1977).

Upon review, we find some of the submitted information consists of official department communications and documentation pertaining to clients of a department assistance program that include client names, addresses and phone numbers. We further find the release of this responsive information in this instance would not be for purposes directly connected with

²See Act of June 10, 2003, 78th Leg., R.S., ch. 198, 2003 Tex. Gen. Laws 611, 641 (abolished Texas Department of Human Services).

the administration of this program. Accordingly, we conclude NETO must withhold the responsive information within the documents we have marked under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resources Code.³

Section 552.101 of the Government Code also encompasses section 181.006 of the Health and Safety Code, which provides the following:

[F]or a covered entity that is a governmental unit, an individual's protected health information:

- (1) includes any information that reflects that an individual received health care from the covered entity; and
- (2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2)(A) defines "covered entity" to include any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2)(A). We note NETO does not assert it is a covered entity for purposes of section 181.006 of the Health and Safety Code. Further, NETO has not explained how the remaining responsive information, which pertains to individuals receiving utility payment assistance, consists of protected health information. Therefore, we find NETO has failed to demonstrate the applicability of section 181.006 of the Health and Safety Code to the remaining responsive information, and NETO may not withhold any portion of the remaining responsive information under section 552.101 of the Government Code on that basis.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information. In this regard, we understand NETO to raise section 49.303 of title 40 of the Texas Administrative Code only for the submitted information identifying individuals to whom NETO delivers meals. *See* 40 T.A.C. §§ 49.303(a) (providing a contractor must comply with applicable federal and state laws regarding confidentiality of information regarding an individual), .301 (this subchapter describes the requirements a contractor must meet to maintain a contract with the department), .101(a)(3)(C) (the subchapters of chapter 49 of title 40 of the Texas Administrative Code apply to an applicant or contractor for certain programs and services, to include home delivered meals under Title XX, Subtitle A of the Social Security Act).

Finally, we note NETO asserts that it "is also concerned about language in the various grants which might impact the release of such information, but because of the time frame has not had adequate time to research the grant documents for such individual programs." However, NETO has not provided any such grant documents to our office for review, or provided any further explanation for how the terms of any applicable grant documents would make the remaining responsive information confidential. Accordingly, NETO may not withhold the remaining responsive information under section 552.101 on this basis.

In summary, we conclude NETO must withhold the responsive information within the documents we have marked under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resources Code. NETO must release the remaining 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 574701

Enc. Submitted documents

c: Requestor
(w/o enclosures)