



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

January 4, 2017

Ms. Tiffany N. Evans  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2017-00169

Dear Ms. Evans:

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# 640533 (GC No. 23798).

The City of Houston (the "city") received a request for the addresses chosen to be part of a specified project and the budget summary for the specified project. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state, and provide documentation showing, you notified the Federal Emergency Management Agency ("FEMA") of its right to submit comments to this office why the submitted information should not be released.<sup>1</sup> *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

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. 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

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<sup>1</sup>As of the date of this letter, this office has not received comments from FEMA explaining why any of the submitted information should not be released.

of the United States Code ("Federal Privacy Act"). 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 submitted information, and you may not withhold any of this information under section 552.101 of the Government Code on that basis. The city must release the submitted 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](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,



Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/akg

Ref: ID# 640533

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)