



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 27, 2019

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

OR2019-08354

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# 756570 (ORR# 25703).

The City of Houston (the "city") received a request for correspondence between a specified city department and a named individual during a specified time period containing specified terms.¹ The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims and reviewed the submitted representative sample of information.²

¹The city states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information because it does not consist of correspondence between the specified city department and the named individual. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

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 made confidential by other statutes. The city argues the submitted information is confidential pursuant to section 26.109(b) of title 49 of the Code of Federal Regulations.³ Title 49, part 26 of the Code of Federal Regulations governs the participation of disadvantaged business enterprises in the United States Department of Transportation (“DOT”) financial assistance programs, and provides, in relevant part, the following:

(b) Confidentiality of information on complainants. Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing[.]

49 C.F.R. § 26.109(b). Part 26 applies to recipients of certain federal-aid highway funds, federal transit funds, and airport funds. *See id.* § 26.3(a). We understand the city receives federal funds from DOT. Upon review, we agree section 26.109 makes confidential certain information held by the city, including the identity of complainants who elect confidentiality. The city in this instance does not inform us whether the complainant at issue in the submitted information elected confidentiality for his identity. Thus, we must rule in the alternative. If the complainant at issue timely elected confidentiality for his identity, then the city must withhold the responsive information in its entirety under section 552.101 of the Government Code in conjunction with section 26.109(b) of title 49 of the Code of Federal Regulations in order to protect the complainant’s identity. However, if the complainant did not timely elect confidentiality for his identity, then section 26.109(b) is not applicable to the responsive information, and the city may not withhold any portion of the information under section 552.101 on that basis. In that instance, we will consider additional exceptions to disclosure of the responsive information.

³A federal statute or an administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101 of the Government Code. *See* Open Records Decision No. 476 (1987) (addressing statutory predecessor).

The responsive information contains e-mail addresses that are subject to section 552.137 of the Government Code.⁴ Section 552.137 of the Government Code 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* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the city must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *Open Records Decision No. 180 at 3 (1977)*. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see Open Records Decision No. 109 (1975)*. If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, if the complainant at issue timely elected confidentiality for his identity, then the city must withhold the responsive information in its entirety under section 552.101 of the Government Code in conjunction with section 26.109(b) of title 49 of the Code of Federal Regulations in order to protect the complainant’s identity. If the complainant did not timely elect confidentiality for his identity, then the city must withhold the personal e-mail addresses we marked under section 552.137 of the Government Code unless the owners affirmatively consent to their public disclosure and must release the remaining responsive information; however, any information that is subject to copyright may be released only in accordance with copyright law.

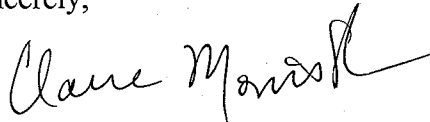
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

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 "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/mo

Ref: ID# 756570

Enc. Submitted documents

c: Requestor
(w/o enclosures)