



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 30, 2019

Ms. DeAnne Lin
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2019-24451

Dear Ms. Lin:

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# 783633 (C. A. File No. 19PIA0449).

The Harris County Housing Authority (the "authority") received a request for all property inspections and follow-up inspections, termination of contract and abatement letters, and eviction notices sent to voucher holders during specified time periods. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.132, 552.139, 552.147, and 552.148 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note the requestor only seeks property inspections and follow-up inspections, termination of contract and abatement letters, and eviction notices sent to voucher holders. Accordingly, only the submitted property inspections and follow-up inspections,

¹Although you do not cite section 552.107 of the Government Code in your brief, we understand you to raise this exception based upon the substance of your arguments.

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.

termination of contract and abatement letters, and eviction notices sent to voucher holders, which we marked, are responsive to this request. Therefore, the remaining information is not responsive to the request for information because it does not consist of any of the categories of records specified in the request or was created outside of the time period specified in the request. 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 this information in response to this request.³

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 other statutes make confidential. You claim the responsive information is protected by the Privacy Act of 1974, section 552a of title 5 of the United States Code (“Federal Privacy Act”). The Federal Privacy Act applies to an “agency,” which is defined as “any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency[.]” See 5 U.S.C. §§ 552(f)(1)(formerly 5 U.S.C. § 552(e)), 552a(a)(1) (referring to 5 U.S.C. § 552(e) for definition of “agency”). 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). You assert that “as a recipient of federal funds and administrator of various HUD programs, the records of [the authority] are subject to federal law.” 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 information at issue, and the authority may not withhold any of the responsive information under section 552.101 of the Government Code on that basis.

As noted above, section 552.101 of the Government Code encompasses information other statutes make confidential. A federal regulation enacted pursuant to statutory authority can

³As we are able to make this determination, we need not address your arguments against disclosure of this information.

provide statutory confidentiality for purposes of section 552.101 of the Government Code. See Open Records Decision No. 599 at 4 (1992). You raise section 552.101 in conjunction with 5.2007(c) of title 24 of the Code of Federal Regulations, which pertains to the protection of certain crime victims who are applicants or beneficiaries of assistance under a program administered by a United States Department of Housing and Urban Development (“HUD”) program covered by the Violence Against Women Act (“VAWA”), which is codified under section 13925 through section 14043e of title 42 of the United States Code. See 24 C.F.R. § 5.2001. Section 5.2007 of title 24 of the Code of Federal Regulations states, in part:

(c) Confidentiality. Any information submitted to a covered housing provider under this section, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking (confidential information), shall be maintained in strict confidence by the covered housing provider.

...

(2) The covered housing provider shall not enter confidential information described in paragraph (c) of this section into any shared database or disclose such information to any other entity or individual, except to the extent that the disclosure is:

(i) Requested or consented to in writing by the individual in a time-limited release

(ii) Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or

(iii) Otherwise required by applicable law.

Id. § 5.2007(c)(2). Upon review, we find you have failed to demonstrate the applicability of 5.2007(c) of title 24 of the Code of Federal Regulations to any of the information at issue. Accordingly, the authority may not withhold of the responsive information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Industrial Found. v. Texas 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 established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical

information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992) (personal financial information includes choice of a particular insurance carrier), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.).

Upon review, we conclude portions of the responsive information, which we marked, meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the authority must withhold the information we marked and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information at issue is highly intimate or embarrassing and of no legitimate public concern, and the authority may not withhold any of the remaining responsive information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "to facilitate the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.*, meaning it was "not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *See Osborne v.*

Johnson, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein). While you assert the information at issue is protected by the attorney-client privilege, upon review, we find you have failed to demonstrate any of the information at issue constitutes communications between privileged parties made in furtherance of the rendition of professional legal services to the authority for the purposes of section 552.107(1) of the Government Code. Thus, the authority may not withhold any of the remaining responsive information on that basis.

Section 552.132(b) of the Government Code provides the following:

The following information held by the crime victim's compensation division of the attorney general's office is confidential:

- (1) the name, social security number, address, or telephone number of a crime victim or claimant; or
- (2) any other information the disclosure of which would identify or tend to identify the crime victim or claimant.

Gov't Code § 552.132(b). You argue portions of the remaining information are confidential under section 552.132. We note the information at issue is held by the authority, not the crime victim's compensation division of the attorney general's office. Therefore, section 552.132(b) is not applicable to this information. Thus, the authority may not withhold any of the remaining responsive information under section 552.132(b) of the Government Code.

You assert some of the remaining information is excepted under section 552.139 of the Government Code. Section 552.139 provides, in part:

- (a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

Id. § 552.139(a). Section 2059.055 of the Government Code provides, in pertinent part:

- (b) Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency[.]

Id. § 2059.055(b). Upon review, we find you have failed to demonstrate any of the information at issue relates to computer network security, to restricted information under 2059.055, or to the design, operation, or defense of a computer network as contemplated by section 552.139(a). Accordingly, the authority may not withhold any of the remaining responsive information under section 552.139(a) of the Government Code.

Section 552.148 of the Government Code provides the following:

(a) In this section, “minor” means a person younger than 18 years of age.

(b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from [required disclosure]:

- (1) the name, age, home address, home telephone number, or social security number of the minor;
- (2) a photograph of the minor; and
- (3) the name of the minor’s parent or legal guardian.

Id. § 552.148. Section 552.148 specifically applies to information maintained by a municipality “for purposes related to the participation by a minor in a recreational program or activity[.]” *Id.* § 552.148(b). Because the information at issue is not related to participation in a recreational program or activity, section 552.148 of the Government Code does not apply, and the authority may not withhold any of the remaining responsive information on that basis.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.⁴ *See id.* § 552.130. Accordingly, the authority must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

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

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

address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the authority must withhold the e-mail addresses in the remaining responsive information under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their public disclosure or subsection (c) applies.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Id.* § 552.147. Accordingly, the authority may withhold the social security numbers within the remaining responsive information under section 552.147 of the Government Code.

We note some of the remaining responsive information appears to 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, the authority must withhold the information we marked and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The authority must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The authority must withhold the e-mail addresses in the remaining responsive information under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their public disclosure or subsection (c) applies. The authority may withhold the social security numbers within the remaining responsive information under section 552.147 of the Government Code. The authority must release the remaining responsive information; however, the authority may only release any information subject to copyright 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 <https://www.texasattorneygeneral.gov/open->

government/members-public/what-expect-after-ruling-issued or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/gw

Ref: ID# 783633

Enc. Submitted documents

c: Requestor
(w/o enclosures)