



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 6, 2022

Ms. Rebekah Wendt
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2022-00410

Dear Ms. Wendt:

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# 923812 (COH Ref. No. R040429).

The City of Houston (the "city") received a request for several categories of information pertaining to specified applications to the city's Harvey Multifamily Program. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.160 of the Government Code. Additionally, the city states release of the submitted information may implicate the proprietary interests of EAF Edison 19 LP and DWR Development Group, LLC ("DWR"). Accordingly, the city states, and provides documentation showing, it notified each third party of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from DWR. We have considered the submitted arguments 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." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 552a of title 5 of the United States Code, also known as the Federal Privacy Act (the "Privacy Act"). We note this office has stated in numerous opinions that information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure merely because the same information is or would be confidential

in the hands of a federal agency. *See, e.g.*, Attorney General Opinion MW-95 (1979) (concluding that neither the federal Freedom of Information Act nor the federal Privacy Act applies to records held by state or local governmental bodies in Texas). However, this office has also held section 552.101 requires a local governmental entity that has obtained information from a federal agency to respect confidentiality imposed on the information by federal law. *See* Open Records Decision No. 561 (1990).

The Privacy Act provides in part “[n]o [federal] 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, unless disclosure would be” allowed by one of twelve enumerated exceptions. 5 U.S.C. § 552a(b).

The city states the information at issue pertains to individuals who applied for Federal Emergency Management Agency (“FEMA”) aid. Additionally, the city indicates FEMA provided the information at issue to the Texas General Land Office, which then provided the information to the city. We understand the city is required to maintain the privacy of applicant information in accordance with the Privacy Act. *See* 44 C.F.R. § 206.110(j)(2) (FEMA must share applicant information with states), (j)(2)(i) (states receiving such information must protect it in the same manner the Privacy Act requires FEMA to protect the applicant information). Thus, we find the submitted information is confidential pursuant to the Privacy Act. The city further states release of the information in response to the present request would not be a release in accordance with the exceptions to the Privacy Act. Accordingly, the submitted information must be withheld under section 552.101 of the Government Code in conjunction with the Privacy Act.¹

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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/ba

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Ref: ID# 923812

Enc. Submitted documents

c: Requestor

cc: 2 Third Parties
(w/o enclosures)