



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 10, 2022

Mr. Eric L. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2022-00829

Dear Mr. Nguyen:

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# 924148 (GovQA# W040594).

The City of Houston (the "city") received a request for particular information related to certain grants. You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.160 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, a portion of which is a representative sample.¹

Initially, we note the requestor seeks only the names, addresses, and phone numbers of the grantees and budget amounts. Thus, the portions of the submitted documents that do not consist of the information requested are not responsive to the present request. 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 that information in response to the 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 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

¹ We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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).

You state the responsive information at issue pertains to individuals who applied for Federal Emergency Management Agency (“FEMA”) aid. Additionally, you state FEMA provided the information in Exhibit 2 to the city through the Texas Water Development Board. 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 responsive information in Exhibit 2 is confidential pursuant to the Privacy Act. You further state 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 responsive information in Exhibit 2 must be withheld under section 552.101 of the Government Code in conjunction with the Privacy Act.² However, we find you have failed to demonstrate the applicability of the Privacy Act to Exhibit 2-A. Therefore, the city may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with the Privacy Act.

Section 552.160 of the Government Code provides, in relevant part:

(b) Except as provided by Subsection (c), the following information maintained by a governmental body is confidential:

(1) the name, social security number, house number, street name, and telephone number of an individual or household that applies for state or federal disaster recovery funds;

(2) the name, tax identification number, address, and telephone number of a business entity or an owner of a business entity that applies for state or federal disaster recovery funds; [and]

(3) any other information the disclosure of which would identify or tend to identify a person or household that applies for state or federal disaster recovery funds.

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

(c) The street name and census block group of and the amount of disaster recovery funds awarded to a person or household are not confidential after the date on which disaster recovery funds are awarded to the person or household.

Gov't Code § 552.160(b), (c); *see also id.* § 552.160(a); *id.* § 418.004(1) (defining “disaster” for purposes of section 552.160). You state the remaining responsive information consists of confidential information concerning individuals who applied for disaster recovery assistance. Based on your representations and our review, we find section 552.160 is applicable to some of the information at issue. Accordingly, the city must generally withhold the information we indicated under section 552.160 of the Government Code. We note we are unable to determine from the information provided whether disaster recovery funds have been awarded to any of the individuals at issue. Thus, we must rule conditionally with respect to the information at issue. Accordingly, to the extent disaster recovery funds have been awarded to any of the individuals at issue, the city must release these individuals’ street names, which we have indicated, and withhold the remaining information we have indicated under section 552.160 of the Government Code.³ However, we find you failed to demonstrate the remaining information at issue identifies or tends to identify a business entity, an owner of a business entity, a person, or a household that applied for state or federal disaster recovery funds. Thus, the city may not withhold any portion of the remaining responsive information under section 552.160 of the Government Code.

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. *Indus. Found. v. Tex. 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office also has 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. 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). We note the names, home addresses, and telephone numbers of living members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision Nos. 551 at 3 (disclosure of a person’s name, address, or telephone number not invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Upon review, we find the remaining responsive information relates to individuals who have been de-identified and whose privacy interests are, thus, protected. Accordingly, none of the remaining responsive information may be withheld under section 552.101 on the basis of common-law privacy.

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would “harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, 466 S.W.3d 831, 841 (Tex. 2015). After review of the information at issue and consideration of the arguments, we find the city has failed to demonstrate the applicability of section 552.104 to the remaining responsive information. Thus, we conclude the city may not withhold the information at issue under section 552.104(a).

In summary, the city must withhold the responsive information in Exhibit 2 under section 552.101 of the Government Code in conjunction with the Privacy Act. To the extent disaster recovery funds have been awarded to any of the individuals at issue, the city must release these individuals’ street names, which we have indicated, and withhold the remaining information we have indicated under section 552.160 of the Government Code. The city 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 <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,

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jm

Ref: ID# 924148

Enc. Submitted documents

c: Requestor
(w/o enclosures)