



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 17, 2022

Ms. Tammye Curtis-Jones  
Housing Authority of The City of Houston  
2640 Fountain View Drive, Suite 409  
Houston, Texas 77057

OR2022-07805

Dear Ms. Tammye Curtis-Jones:

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# 937821.

The Houston Housing Authority (the "authority") received a request for: (1) total contributions made to a specified fund during a stated date range; (2) policies pertaining to a specified topic; (3) certain information pertaining to request for proposals number 21-01; and (4) a specified summary report.<sup>1</sup> The authority states it does not maintain information responsive to a portion of the request.<sup>2</sup> The authority also states it will release some information. The authority claims the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. Additionally, the authority states release of the submitted information may implicate the proprietary interests of Affordable Carpets, LLC; Dr. Myron E. Cloyd Consulting Services; Initiatives for Healthy Communities; Radar, LLC; Regional Consulting ("Regional"); The Alliance; and WaterLight Group. Accordingly, the authority states, and provides documentation showing, it notified these third parties of the request for information and of their right to

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<sup>1</sup> The authority states, and provides documentation showing, 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).

<sup>2</sup> The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See* *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 received comments from Regional. We have reviewed the submitted arguments and the submitted representative sample of information.<sup>3</sup>

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 authority has established the release of the information at issue would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation. Thus, we conclude the authority may withhold Exhibits 8 and 9 under section 552.104(a) of the Government Code.<sup>4</sup>

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the authority must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the authority has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the authority may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the authority may withhold Exhibits 8 and 9 under section 552.104(a) of the Government Code. The authority must withhold the information we have marked under

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<sup>3</sup> We 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.

<sup>4</sup> As our ruling is dispositive, we need not address Regional's arguments against disclosure of this information.

section 552.101 of the Government Code in conjunction with common-law privacy. The authority must release the remaining 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,

Katie Stallcup  
Assistant Attorney General  
Open Records Division

AKS/jm

Ref: ID# 937821

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

7 Third Parties  
(w/o enclosures)