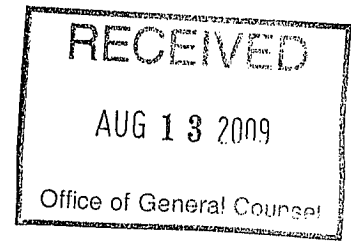




ATTORNEY GENERAL OF TEXAS
GREG ABBOTT



August 12, 2009

Mr. Gregory T. Mays
Dallas Housing Authority
3939 North Hampton Road
Dallas, Texas 75212

OR2009-11258

Dear Mr. Mays:

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# 350507.

The Dallas Housing Authority (the "authority") received two requests from the same requestor for (1) specific names, addresses, dates of birth, and payment details associated with the authority's housing programs and (2) information regarding authority databases and the name, date of birth, job title, and salary of authority employees. You state you have released some of the requested information to the requestor. You claim that some of the submitted information is excepted from disclosure under section 552.102 of the Government Code. We also understand you to raise section 552.101 of the Government Code for a portion of the submitted information. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

We understand you to argue that the present requests for information are too broad and that complying with these requests would be burdensome. However, we note that a governmental body must make a good-faith effort to relate the request to information that is within its

¹We 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.

possession or control. See Open Records Decision No. 561 at 8-9 (1990). A governmental body may not decline to comply with the requirements of the Act on the ground of administrative inconvenience. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (cost or difficulty in complying with Act does not determine availability of information). The fact that it may be burdensome to provide the information at issue does not relieve a governmental body of its responsibility to comply with the Act. *Id.*; Open Records Decision No. 497 (1988). Therefore, the authority may not decline to comply with the requirements of the Act on the basis of administrative inconvenience.

We note that the requestor seeks electronic copies of the information at issue in an "Excel" or "text file" format. A governmental body is not required to produce the responsive information in the format requested or create new information to respond to the request for information. *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex.1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3, 342 at 3 (1982), 87 (1975). However, section 552.228 of the Government Code requires a governmental body to provide a copy of the public information in the requested medium if it has the technological ability to do so without the purchase of software or hardware. See Gov't Code § 552.228(b)(1), (2). Accordingly, if the authority has the technological capability to provide the information at issue in the requested electronic format, it must do so; however, if the authority does not have the technological capability, it may release the information at issue in the submitted paper format or in another medium acceptable to the requestor. See *id.* § 552.222(c).

The requests seek specific names, addresses, dates of birth, and payment details associated with the authority's housing programs, information regarding authority databases, and particular employee information. Thus, any information extraneous to this is not responsive to the current requests. The authority need not release non-responsive information in response to the requests and this ruling will not address that information.

Next, we must address the requestor's assertion that the authority did not comply with section 552.301 of the Government Code. Pursuant to section 552.301(b) of the Government Code, a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. See *id.* § 552.301(a), (b). Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative

samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e).

In this instance, the requestor asserts he sent two requests to the authority on December 11, 2008 and April 24, 2009, respectively. However, you contend the authority received both requests on May 7, 2009, stating each request “clarified a previous request.” Pursuant to section 552.303 of the Government Code, we sent you a letter asking you to clarify how the authority responded to the December 11, 2008 and April 24, 2009 requests, therefore complying with section 552.301(b). *See id.* § 552.303(c). You again stated the May 7, 2009 request clarified the two previous requests. However, you provided no explanation of the nature of the clarification. Upon review, we conclude that the original requests were clear in specifying the particular information sought. Thus, we conclude the authority did not comply with the procedural requirements of section 552.301(b). *See id.* § 552.301(e)(1)(C) (governmental body must submit signed statement or evidence sufficient to establish date of receipt of written request for information).

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless a compelling reason exists to withhold the information from disclosure. *See City of Dallas v. Abbott*, 279 S.W.3d 806 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *see also* Open Records Decision No. 319 (1982). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You raise sections 552.101 and 552.102 of the Government Code for some of the responsive information. Because your claims under sections 552.101 and 552.102 can provide compelling reasons to withhold information, we will address these exceptions.

We note that you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov’t Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of our records indicate, that the authority has been authorized to withhold any of the redacted information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, the information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the authority should refrain from redacting any information that it submits to this office in seeking an open records ruling. Failure to do so may result in the presumption that the

redacted information is public. *See* Gov't Code § 552.302. We now turn to your arguments for the responsive 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." *Id.* § 552.101. This section encompasses information protected by other statutes. You assert that a portion of the responsive information is confidential under the Violence Against Women Act ("VAWA"), which is codified under section 13925 through section 14045d of title 42 of the United States Code. Section 13925(b)(2) provides, in part:

(2) Nondisclosure of confidential or private information

(A) In general

In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking, and their families, grantees and subgrantees under this title shall protect the confidentiality and privacy of persons receiving services.

(B) Nondisclosure

Subject to subparagraphs (C) and (D), grantees and subgrantees shall not—

(i) disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs; or

(ii) reveal individual client information without the informed, written, reasonably time-limited consent of the person . . . about whom information is sought, whether for this program or any other Federal, State, tribal, or territorial grant program, except that consent for release may not be given by the abuser of the minor, person with disabilities, or the abuser of the other parent of the minor.

42 U.S.C. § 13925(b)(2)(A), (B). Section 13925(a)(18) states:

(18) Personally identifying or personal information

The term “personally identifying information” or “personal information” means individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, including—

(A) a first and last name;

(B) home or other physical address;

(C) contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);

(D) a social security number; and

(E) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any of subparagraphs (A) through (D), would serve to identify any individual.

See id. § 13925(a)(18). You state the authority receives grants under VAWA to provide housing assistance to families who are the victims of domestic violence. *See* 42 U.S.C. § 13925; *see also* 42 U.S.C. § 14043e-4(b) (authorizing grants to promote access to and use of public and assisted housing by victims of domestic violence, dating violence, sexual assault, and stalking). You inform us that a portion of the responsive information pertains to the families the authority serves with the aid of such grants. You contend the personally identifying information of such individuals is confidential under section 13925(b)(2) of title 42 of the United States Code. You do not indicate the authority has received consent to release any information from any person about whom information is sought pursuant to section 13925(b)(2)(B)(ii). Based on your representations and our review, we find the responsive information includes the personally identifying information of individuals that is collected in connection with the authority’s rendition of housing assistance funded by VAWA. Thus, the authority must withhold this information pursuant to section 552.101 of the Government Code in conjunction with section 13925(b)(2). You acknowledge that portions of the responsive information pertain to individuals that the authority does not aid with VAWA grants. Therefore, you may not withhold the personally identifying information of individuals that is not collected in connection with the authority’s rendition of housing assistance funded by VAWA under section 552.101 on that basis.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 ((Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled the test to be applied to information protected under section 552.102 is the same as the test

formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 688 (Tex. 1976). Thus, we will address your claims under sections 552.101 and 552.102 together.

Information is protected from disclosure under the common-law right to privacy if it (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and (2) is of no legitimate concern to the public. See *Industrial Found.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We note that dates of birth and addresses are not highly intimate or embarrassing. See *Tex. Comptroller of Public Accounts v. Attorney Gen. of Tex.*, 244 S.W.3d 629 (Tex. App.—2008, pet. granted) (“We hold that date-of-birth information is not confidential[.]”); see also Attorney General Opinion MW-283 (1980) (public employee's date of birth not protected under privacy); Open Records Decision No. 455 at 7 (1987) (birth dates, names, and addresses are not protected by privacy).

In Open Records Decision No. 318 (1982), this office concluded that the names and present addresses of former residents of a public housing development were not protected from disclosure under the common-law right to privacy. See Open Records Decision No. 318 (1982). Likewise, the amounts paid by a housing authority on behalf of eligible tenants are not protected from disclosure under privacy interests. See Open Records Decision No. 268 (1981); see also Open Records Decision Nos. 600 at 9-10 (1992), 545 (1990), 489 (1987), 480 (1987).

Based on your representations and our review, we find you have not established that any part of the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern; therefore, the authority may not withhold any of the information at issue on the basis of common-law privacy under section 552.101 or section 552.102 of the Government Code. As you raise no further arguments against disclosure, the remaining responsive information must be released. See Gov't Code §§ 552.301(b) (governmental body must ask for a decision from this office and state exceptions that apply within ten business days of receiving written request for information), .302; see also *id.* § 552.022(a)(2) (name, salary, and title of public employee are public 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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/RL

Ref: ID# 350507

Enc. Submitted documents

cc: Requestor
(w/o enclosures)